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Supt Ct.

VOLUME I

TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1942

No. 73

NATIONAL LABOR RELATIONS BOARD, PETITIONER

vs.

INDIANA & MICHIGAN ELECTRIC COMPANY, AND MICHIANA ELECTRICAL UTILITY WORKERS ASSOCIATION

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT

PETITION FOR CERTIORARI FILED APRIL 11, 1942

CERTIORARI GRANTED MAY 25, 1942

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John R. Marks	188	189		
Taylor Edgell	191	198	213	214
George S. Holmes	217	229	247	259

TESTIMONY ON BEHALF OF THE BOARD—(Continued)

	DI.	CR.	REDI.	RECR.
Lester Shields	260	261		261
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Earl Freeman	276			
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Ray M. Collins	279	286	301	302
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Claude F. Buckley	316	317		320
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Forrest Elkins	325	327		
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Earl Seeley	340			
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	DI.	CR.	REDI.	RECR.
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H. D. Sill	362	365	366	
Milton C. Zumpe	366	368		
Taylor Edgell	369	370		
George W. Schmidt	371	375		
James Marsh	379	387		
F. M. Henderson	387	400	410	411
Donovan D. Strock	411	417		
G. F. Dequine	421	446	478	476, 477
Earl F. Livelsberger	479	483	484	
William La Velle	488	499	502	506

TESTIMONY ON BEHALF OF RESPONDENT—(Continued)

	DI.	CR.	REDI.	RECR.
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Leo Ringen	531	532		
Clarence E. Daniels	533			
Frank Miles	535	541		
Jack Betly	543	546		
Ross N. Lillard	548	556		
Kenneth A. Peach	560	563		
Glen Carlton	564	576		
Fred E. Rikert	588			
E. J. Miller	588			
Charles B. Calvert	589	611	616	
Thomas F. English	618	625		
Ray M. Collins	628			

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No. 5 636
No. 6 723
No. 7 735
No. 11 736
No. 12 737
No. 13 785

RESPONDENT'S EXHIBITS

No. 1 797
No. 2 809
No. 3 810
No. 18 812
No. 19 816
No. 20 826

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United States Circuit Court of Appeals

FOR THE SIXTH CIRCUIT

NATIONAL LABOR RELATIONS BOARD,
PETITIONER,

v.

INDIANA & MICHIGAN ELECTRIC COMPANY,
RESPONDENT.

PETITION FOR ENFORCEMENT OF AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD

(Filed December 13, 1940)

To the Honorable, the Judges of the United States Circuit Court of Appeals for the Sixth Circuit:

The National Labor Relations Board, pursuant to the National Labor Relations Act (Act of July 5, 1935, 49 Stat. 449, c. 372, 29 U. S. C. § 151 *et seq.*), respectfully petitions this Court for the enforcement of its order against respondent, Indiana & Michigan Electric Company, and its officers, agents, successors, and assigns. The proceeding resulting in said order is known upon the records of the Board as "In the Matter of Indiana & Michigan Electric Company and International Brotherhood of Electrical Workers, Local B-9, Case No. C-1335."

In support of this petition, the Board respectfully shows:

(1) Respondent is an Indiana corporation, engaged in business in the State of Michigan, within this judicial circuit, where some of the unfair labor practices occurred. This Court therefore has jurisdiction of this petition by

virtue of Section 10 (e) of the National Labor Relations Act.

(2) Upon all proceedings had in said matter before the Board, as more fully shown by the entire record thereof certified by the Board and filed with this Court herein, to which reference is hereby made, and including, without limitation, a complaint, as amended, respondent's answer, hearing for the purpose of taking testimony, intermediate report, respondent's exceptions to intermediate report, oral argument before the Board, union's rebuttal to respondent's exceptions, respondent's petition to reopen case and to receive further evidence, the Board, on February 28, 1940, duly stated its findings of fact, conclusions of law and issued an order directed to the respondent, and its officers, agents, successors, and assigns. So much of said order as relates to this proceeding is as follows:

ORDER

Upon the basis of the above findings of fact and conclusions of law, and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondent, Indiana & Michigan Electric Company, and its officers, agents, successors, and assigns shall:

1. Cease and desist from:

(a) In any manner dominating or interfering with the administration of the Michiana Electrical Utility Workers Association, or the formation or administration of any other labor organization of its employees, and contributing any support to Michiana Electrical Utility Workers Association or to any other labor organization of its employees;

(b) Recognizing Michiana Electrical Utility Workers Association as the representative of any of its employees for the purpose of dealing with the respondent concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work;

(c) Giving effect to any agreement which it may have entered into with Michiana Electrical Utility Workers Association in respect to rates of pay, wages, hours of employment, or other conditions of work;

(d) In any other manner interfering with, restraining, or coercing its employees in the exercise of their rights to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the National Labor Relations Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Withdraw all recognition from Michiana Electrical Utility Workers Association as the representative of any of its employees for the purpose of dealing with the respondent concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work, and completely disestablish Michiana Electrical Utility Workers Association as such representative;

(b) Post immediately and in conspicuous places in each operating division of the respondent's utility system, and maintain for a period of at least sixty (60) days, notices, stating: (1) that the respondent will cease and desist as provided in paragraphs 1 (a), (b), (c), and (d) of this Order; (2) that the respondent withdraws all recognition from Michiana Electrical Utility Workers Association, as representative of any of its employees, completely disestablishes it as such representative, and gives no further effect to any agreement with said Association in respect to rates of pay, wages, hours of employment, or other conditions of work;

(c) Notify the Regional Director for the Thirteenth Region in writing, within ten (10) days from the date

of this Order, what steps the respondent has taken to comply herewith.

(3) On February 28, 1940, the Board's decision and order was served upon respondent by sending a copy thereof postpaid, bearing Government frank, by registered mail, to Messrs. Seebirt, Care and Deahl, respondent's attorneys in South Bend, Indiana.

(4) Pursuant to Section 10 (e) of the National Labor Relations Act, the Board is certifying and filing with this Court a transcript of the entire record in the proceeding before the Board, including the pleadings, testimony and evidence, findings of fact, conclusions of law, and order of the Board.

WHEREFORE, the Board prays this Honorable Court that it cause notice of the filing of this petition and transcript to be served upon respondent and that this Court take jurisdiction of the proceeding and of the questions determined therein and make and enter upon the pleadings, testimony and evidence, and the proceedings set forth in the transcript and upon so much of the order made thereupon as relates to this proceeding, set forth in paragraph (2) hereof, a decree enforcing in whole so much or said order of the Board and requiring respondent and its officers, agents, successors, and assigns to comply therewith.

NATIONAL LABOR RELATIONS BOARD,
By ROBERT B. WATTS,
General Counsel.

Dated at Washington, D. C., this 11th day of December, 1940.

DISTRICT OF COLUMBIA, ss:

Robert B. Watts, being first duly sworn, states that he is General Counsel of the National Labor Relations Board, petitioner herein, and that he is authorized to and does make this verification in behalf of said Board; that he has read the foregoing petition and has knowledge of the

contents thereof; and that the statements made therein are true to the best of his knowledge, information and belief.

ROBERT B. WATTS.

Subscribed and sworn to before me this 11th day of December, 1940.

(SEAL) JOHN E. LAWYER, *Notary Public*, District of Columbia.

My commission expires August 31, 1944.

CERTIFICATE OF THE NATIONAL LABOR RELATIONS BOARD

(Dated December 11, 1940)

The National Labor Relations Board, by its Secretary, duly authorized by Section 1 of Article VI, Rules and Regulations of the National Labor Relations Board, Series 2, as amended, hereby certifies that the documents annexed hereto constitute a full and accurate transcript of the entire record in a proceeding had before said Board entitled, "In the Matter of Indiana & Michigan Electric Company and International Brotherhood of Electrical Workers, Local B-9," the same being Case No. C-1335 before said Board, such transcript including the pleadings, testimony and evidence upon which the order of the Board in said proceeding was entered, and including also the findings and order of the Board.

Fully enumerated, said documents attached hereto are as follows:

(1) Amended charge filed by International Brotherhood of Electrical Workers, Local B-9, November 12, 1938.

(2) Complaint and notice of hearing issued by the National Labor Relations Board on November 12, 1938.

(3) Respondent's petition and motion for extension of time in which to answer and for extension of time for hearing, sworn to November 16, 1938.

(4) Order granting extension of time in which to file answer and denying time for postponement of hearing, dated November 18, 1938.

(5) Respondent's answer, sworn to November 23, 1938.

(6) Respondent's motion to make complaint more specific.

(7) Respondent's motion for continuance of hearing.

(8) Certified copy of order designating Tilford E. Dudley Trial Examiner for the National Labor Relations Board, dated November 25, 1938.

Documents listed hereinabove under items 1-8, inclusive are contained in the exhibits and included under the following item:

(9) Stenographic transcript of testimony before Tilford E. Dudley, Trial Examiner for the National Labor Relations Board on November 28, 29, 30, December 1, 2, 5, 6, 7, 8 and 9, 1938, together with all exhibits introduced in evidence.

(10) Copy of intermediate report, dated July 27, 1939.

(11) Copy of order transferring case to the National Labor Relations Board, dated August 4, 1939.

(12) Copy of respondent's motion to extend period within which to file exceptions, sworn to August 4, 1939; and copy of letter dated August 8, 1939, granting request.

(13) Copy of respondent's petition for permission to file brief and to argue orally; and copy of letter dated August 23, 1939, granting permission to file brief.

(14) Copy of respondent's exceptions to intermediate report.

(15) Copy of notice of hearing for the purpose of oral argument, dated October 17, 1939.

(16) Copy of notice of postponement of hearing for the purpose of oral argument, dated November 7, 1939.

(17) Copy of list of appearances at oral argument held November 9, 1939.

(18) Copy of union's rebuttal to respondent's exceptions to intermediate report and to other parts of the record and proceedings.

(19) Copy of respondent's petition for an order to reopen record and to receive further evidence.

(20) Copy of decision, findings of fact, conclusions of law and order issued by the National Labor Relations Board on February 28, 1940, together with affidavit of service and United States Post Office return receipts thereof.

IN TESTIMONY WHEREOF the Secretary of the National Labor Relations Board, being thereunto duly authorized as aforesaid, has hereunto set his hand and affixed the seal of the National Labor Relations Board in the City of Washington, District of Columbia, this 11th day of December, 1940.

NATHAN WITT, *Secretary*,
NATIONAL LABOR RELATIONS BOARD.

(SEAL)

PETITIONER'S DESIGNATION OF RECORD

(Filed December 13, 1940)

Comes now the National Labor Relations Board, petitioner in the above proceeding, and in conformity with Section 5 of Rule 15 of this Court heretofore adopted, hereby designates the following portions of the transcript and record herein to be made part of the printed record:

1. Pages 1, 11, 12, 13, 14, 15, 16, 17, 18, and 19 of the transcript.

2. The testimony of the following witnesses:

NAME	PAGE	LINE
Guy, Samuel,		
(direct examination)	32	1- 5, inclusive
	43	18-25, "
	45	6-25, "
	46	6-25, "
Edgell, Taylor,		
(direct examination)	137	5-25, inclusive
	138 to 140, inclusive	
	141	1-18, inclusive
	143	3-24, "
	168	4-10, "
(cross examination)	175	9
	177	10-25, inclusive
	178 to 189, inclusive	
	190	1- 5, inclusive
	195	1- 5, "
	200	13-25, "
	206	3-25, "
	207	1- 6, "
(re-direct examination)	212	7-25, "
	213	1- 5, "
	219	16-19, "
(re-cross examination)	226	12-25, "
	227	1-10, "
	231	4-25, "
	232	1-17, "

NAME	PAGE	LINE
Holmes, Geo. S.,		
(direct examination)	255	8-11, inclusive
	256 to 264,	inclusive
	265	1-16, inclusive
	280	16-25, "
	283	11-25, "
	284	1-24, "
	290	12-25, "
	291	1-25, "
	292	1- 2, "
	293	10-25, "
	294	1- 4, "
(cross-examination)	300	7
	302	12-25, inclusive
	303 to 308,	inclusive
	309	1-11, inclusive
	318	24-25, "
	319 to 320,	inclusive
	321	1-13, inclusive
	323	9-22, "
	325	11-22, "
	328	23-25, "
	329	1-25, "
	330	1-24, "
	337	4-25, "
	341 to 347,	inclusive
	348	1- 4, inclusive
	370	9-16, "
	381	18-25, "
	382 to 384,	inclusive
	385	1-11, inclusive
Edwards, Dewey,		
(direct examination)	482	2- 6, inclusive
	486	16-25, inclusive
Lambert, Nelson,		
(direct examination)	551	13-17, inclusive
	555	3-25, "
	556 to 558,	inclusive

NAME	PAGE	LINE
Lambert, Nelson, (continued)		
(direct examination)	562	1-17, inclusive
	563	11-14, "
	564	12-25, "
(cross-examination)	566	24-25, "
	567	1-25, "
	568	1-12, "
	581	10-24, "
	588	1-19, "
Carlson, Geraldine,		
(direct examination)	597	13-17, inclusive
	600	4-25, "
Hoblitzel, R. L.,		
(direct examination)	655	2-21, inclusive
	660	10-25, "
	661	1-25, "
	662	1-25, "
Collins, Ray,		
(direct examination)	731	2-25, inclusive
	732 to 735, inclusive	
	736	1-23, inclusive
	738	12-25, "
	739 to 740, inclusive	
	741	1- 2, inclusive
	742	14-25, "
(cross-examination)	771	10
	777	2-13, inclusive
	778 to 779, inclusive	
	780	1- 4, inclusive
	783	13-17, "
	805	11-17, "
	813	23-25, "
	814	1-12, "
(re-direct examination)	814	13-25, "
	815	1- 4, "
	818	10-25, "
	819	1-25, "
	820	1-10, "

Petitioner's Designation of Record

NAME	PAGE	LINE
Otis, Albert,		
(direct examination)	847	1- 5, inclusive
	849	22-25, "
	850	1- 4, "
Buckley, C. F.,		
(direct examination)	896	16-20, inclusive
	898	1-15, "
Bulwick, Walter,		
(direct examination)	920	5- 9, inclusive
	928-931, inclusive	
Elkins, Forrest,		
(direct examination)	943	4- 8, inclusive
	947	1-21, "
	968	13-25, "
Ernst, E. J.,		
(direct examination)	997	24-25, inclusive
	998 to 999, inclusive	
	1000	1-22, inclusive
	1001	16-25, "
	1002 to 1003, inclusive	
	1004	1- 4, "
	1005	5-25, "
	1006 to 1007, inclusive	
	1008	1-10, "
Durfey, Ernest,		
(direct examination)	1025	8-25, inclusive
	1026	7-25, "
	1028	18-25, "
	1029 to 1031, inclusive	
Seeley, Earl,		
(direct examination)	1060	12-16, inclusive
	1061	13-25, "
	1062	1-25, "
	1063	11-25, "
Kidder, Russel,		
(direct examination)	1077	2-25, inclusive
	1078	1-25, "
	1079	22-25, "
	1080	1-25, "
	1081	1-15, "

NAME	PAGE	LINE
Clayes, Frank,		
(direct examination)	1121	1- 6, inclusive
	1122 to 1128, inclusive	
	1130	18-25, inclusive
	1131 to 1132, inclusive	
Havelin, Charles,		
(direct examination)	1292	8-12, inclusive
	1293	6-22, "
	1294 to 1298, inclusive	
McClure, Virgil,		
(direct examination)	1344	7-25, inclusive
	1345 to 1346, inclusive	
(cross-examination)	1366	24-25, inclusive
	1371	3-24, inclusive
Sill, H. D.,		
(direct examination)	1384	16-25, inclusive
	1385	1- 8, "
	1398	14-25, "
	1400	1- 7, "
(cross-examination)	1429	8-16, inclusive
Zumpe, Milton Z.,		
(direct examination)	1437	7-25, inclusive
	1438	1- 4, "
(cross-examination)	1444	2-25, inclusive
	1445	1-24, "
Marsh, James,		
(direct examination)	1581	12-15, inclusive
	1583	20-25, "
	1584	1- 9, "
	1591	2-25, "
	1595	19-25, "
	1596	1-25, "
	1600	21-25, "
	1601	1-25, "
	1602	1-10, "
Henderson, F. M.,		
(direct examination)	1640	18-25, inclusive
	1641 to 1658, inclusive	

Petitioner's Designation of Record

NAME	PAGE	LINE
Henderson, F. M., (continued).		
(cross-examination)	1660	9-25, inclusive
	1661 to 1667, inclusive	
	1668	1- 9, inclusive
	1672	12-25, "
	1673 to 1677, inclusive	
	1678	1-18, inclusive
	1680	12-17, "
(re-direct examination)	1680	21-25, inclusive
	1681	1-25, "
	1682	1- 8, "
Strock, D. D.,		
(direct examination)	1682	14-25, inclusive
	1683 to 1685, inclusive	
	1690	6-14, inclusive
(cross-examination)	1692	2
	1695	2-25, inclusive
	1696	1-25, "
	1697	1-19, "
	1700	21-25, "
	1701	1- 9, "
	1704	21-25, "
Dequine, G. F.,		
(direct examination)	1709 to 1737, inclusive	
(cross-examination)	1754	23
	1765	15-25, inclusive
	1766 to 1767, inclusive	
	1768	1-15, inclusive
	1769	9-25, "
	1770	1-25, "
	1771	1-21, "
	1776 to 1790, inclusive	
	1791	1-12, inclusive
	1793	8-25, "
	1794 to 1797, inclusive	
	1798	1-19, inclusive
	1800	7-25, "
	1801 to 1819, inclusive	

NAME	PAGE	LINE
Livelsberger, Earl,		
(direct examination)	1838	14-25, inclusive
	1839	1- 5, "
	1840	1-25, "
	1841	1-16, "
	1851	24-25, "
	1852	1-25, "
(cross-examination)	1857	5-25, "
	1858	1- 4, "
(re-direct examination)	1868	18
	1869	7-25, inclusive
	1870	1-25, "
	1871	1-19, "
	1872	16-25, "
	1873 to 1874, inclusive	
LaVelle, William,		
(direct examination)	1886	22-25, inclusive
	1887 to 1904, inclusive	
(cross-examination)	1904 to 1907, inclusive	
(re-direct examination)	1907 to 1914, inclusive	
(re-cross examination)	1914 to 1922, inclusive	
Harter, Russell,		
(direct examination)	1922	16-25, inclusive
	1923 to 1932, inclusive	
(cross-examination)	1932 to 1950, inclusive	
Ringen, Leo,		
(direct examination)	1955 to 1956, inclusive	
(cross-examination)	1958	13-24, inclusive
Daniels, Clarence,		
(direct examination)	1964	17-25, inclusive
	1965	1-25, "
Miles, Frank,		
(direct examination)	1968	13-25, inclusive
	1969 to 1976, inclusive	

Petitioner's Designation of Record

NAME	PAGE	LINE
Miles, Frank, (continued)		
(cross-examination)	1977	5-25, inclusive
	1978	1-25, "
	1979	1-20, "
Betley, Jack,		
(direct examination)	1982	6- 9, inclusive
	1988	3-25, inclusive
	1989	1-25, "
	1990	1-14, "
(cross-examination)	1990	17
	1993	19-25, inclusive
	1994	1-25, "
Lillard, Ross,		
(direct examination)	2013	4-25, inclusive
	2014	1-25, "
	2015	1-10, "
	2025	19-21, "
(cross-examination)	2027	9-25, inclusive
	2028	1-25, inclusive
	2032	10-25, "
	2033	9-25, "
	2034 to 2036, inclusive	
Peach, Kenneth,		
(direct examination)	2036	20-22, inclusive
(cross-examination)	2041	17
	2044	18-25, inclusive
	2045	1- 6, "
Carlton, Glen,		
(direct examination)	2045	21-25, inclusive
	2046 to 2059, inclusive	
	2063	12-25, "
	2064	1-25, "
	2073	21-25, "
	2074	1-25, "
(cross-examination)	2077	9-25, "
	2078	1-25, "
	2079	1-19, "

NAME	PAGE	LINE
Carlton, Glen, (continued)		
(cross-examination)	2081	4-25, inclusive
	2082	1-23, "
	2087	8-25, "
	2088	1-25, "
	2089	20-25, "
	2090 to 2099, inclusive	
Rickert, Fred,		
(direct examination)	2104	6-24, inclusive
Miller, E. J.,		
(direct examination)	2107	10-24, inclusive
Calvert, Charles B.,		
(direct examination)	2128	1-25, inclusive
	2140	12-25, "
	2141 to 2159, inclusive	
	2160	1-23, inclusive
	2161	18-25, "
	2162	1-25, "
	2163	1-20, "
	2164	9-25, "
	2165	1-25, "
(cross-examination)	2168	22
	2170	21-25, inclusive
	2171	1-25, "
	2172 to 2177, inclusive	
(re-direct examination)	2178 to 2179, inclusive	
English, Thomas,		
(direct examination)	2180	11-25, inclusive
	2181	1- 7, "
(cross-examination)	2194	21-25, inclusive
	2195 to 2198, inclusive	

3. The motions, etc., appearing on pages 2212 to 2219, inclusive, of the transcript.

4. The following exhibits:

(a) Board Exhibit No. 1-A, 1-C, 1-D (omitting affidavit of service), 1-E, 1-F, 1-G, and 1-H (second page only).[1] Board Exhibit No. 2.

(b) Respondent Exhibits Nos. 18, 19, 20, 21, 22, 23, 24, 25, 26, 28, and 30.

(c) The last 8 pages of Board Exhibit No. 13, being the contract between Indiana & Michigan Electric Co., respondent herein, and Michiana Electrical Utility Workers Association.

(d) Excerpts from Board Exhibit No. 12, as set forth in Appendix A attached hereto.

(e) Excerpts from Respondent Exhibit No. 1 as set forth in Appendix B attached hereto.

(f) The following portions of Board Exhibit No. 5:

1. The Declaration of Policy, appearing on pages 14 to 21.[2]

2. The letter of November 10, 1937, appearing on page 22.

3. Minutes of Michiana Electrical Utility Workers Association for October 21, 1937, appearing on pages 28 and 29.

4. The following excerpts from the minutes of Twin Branch Local Council Meeting for October 19, 1937, appearing at pages 30 and 31:

a—page 30, the first 3 lines and the last paragraph consisting of 10 lines.

b—Page 31, entire page.

5. Minutes of third meeting with management, pages 32 and 33.

6. The letter on stationery of National Labor Relations Board, appearing on page 44.

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[1] Board Exhibit 1 A-F includes the amended charge, complaint, notice of hearing, motions of respondent to make complaint more specific, for a continuance, and to extend time for filing answer and hearing, and order of Regional Director granting in part and denying in part the latter motion.

[2] The pages of Board Exhibit No. 5 are numbered in ink at the right hand corner.

7. The letter on the stationery of Indiana & Michigan Electric Company, appearing on page 46.

8. Page 62 of Board Exhibit No. 5 (the minutes of the July 1, 1937, meeting of the Association).

9. Page 69, the date and the first three paragraphs consisting of 11 lines (the minutes of the July 28, 1937, meeting of the Association).

10. Page 72, the caption and the first three paragraphs, which consist of lines (the minutes of the June 18, 1937, meeting of the Association).

11. Page 74, the caption and the first two paragraphs, which consist of 7 lines (the minutes of the June 17, 1937, meeting of the Association).

12. Page 80, the caption and the first 18 lines (minutes of June 4, 1937, meeting of by-law committee).

13. Page 89, entire page (the report of committee to members of Association relative to May 22, 1937, conference with management).

14. Pages 90 to 92, inclusive (minutes of May 20, 1937, meeting of Association).

5. Intermediate Report of Trial Examiner, filed July 27, 1939.

6. Exceptions of respondent to Intermediate Report, filed September 1, 1939.

7. Petition of respondent to reopen case and to receive further evidence, filed February 19, 1940.

8. The Decision and Order of the National Labor Relations Board, dated February 28, 1940.

9. The petition of the National Labor Relations Board for the enforcement of its order.

Dated at Washington, D. C., this 11th day of December, 1940.

NATIONAL LABOR RELATIONS BOARD,
By (s) ROBERT B. WATTS,
General Counsel.

APPENDIX A (Excerpts from Board's Exhibit No. 12)

Printer's Note: These Excerpts are not printed here because Board's Exhibit No. 12 is printed in full, starting at page 737.

APPENDIX B (Excerpts from Respondent's Exhibit No. 1)

Printer's Note: These Excerpts are not printed here because Respondent's Exhibit No. 1 is printed in full, starting at page 797.

RESPONDENT'S DESIGNATION OF RECORD

(Filed January 3, 1941)

Comes now the Indiana & Michigan Electric Company, respondent in the above proceeding, and in conformity with Section 5 of Rule 15 of this Court heretofore adopted, hereby designates the following portions of the transcript and record herein to be made part of the printed record:

1. The testimony of the following witnesses:

NAME	PAGE	LINE
Guy, Samuel		
(direct examination)	32	6-13, inclusive
	33	1-12, "
	33	25
	34	1-6, "
	34	25
	35	1-4, "
	37	8-12, "
	38	3-12, "
	38	18-25, "
	41	1-21, "
	47	4-25, "
	48	1-23, "

NAME	PAGE	LINE
Guy, Samuel, (continued)		
(cross-examination)	54	6-12, inclusive
	54	25
	55	1-13, "
	77	10-25, "
	78	1-19, "
	81	2-15, "
	82	16-21, "
	85	22-25, "
	86	1-11, "
	88	16-25, "
	89	1-21, "
	90	17-25, "
	91	1-5, "
	91	16-24, "
	101	4-23, "
Marks, John R.		
(direct examination)	113	12-19, inclusive
	114	3-25, "
	115	1-6, "
	115	9-13, "
(cross-examination)	128	16-25, "
	125	1-12, "
	133	17-25, "
	134	1-25, "
	135	1-11, "
Edgell, Taylor		
(direct examination)	143	25
	144	1-25, "
	145	1-16, "
	159	25
	160	1- 6, "
	161	15-25, "
	162	1-16, "
	164	16-25, "
	165	1-8, "
	167	1- 6, "
(cross-examination)	191	7-21, "
	195	1-25, "

NAME	PAGE	LINE	
Edgell, Taylor, (continued)			
(cross-examination)	196	1-10,	inclusive
	197	1-19,	"
	197	23-25,	"
	198	1-11,	"
	198	19-24,	"
	199	8-22,	"
	200	8-13,	"
	201	1-25,	"
	202	1-11,	"
	202	17-25,	"
	203	1-6,	"
	204	21-25,	"
	205	1	
	207	7-25,	"
(re-direct examination)	208	1-9,	"
	209	5-14,	"
	217	12-19,	"
(re-cross examination)	223	19-25,	"
	224	1-6,	"
	238	17-25,	"
Holmes, George S.			
(direct examination)	266	8-13,	"
	268	6-11,	"
	279	1-24,	"
	281	1-5,	"
	281	15-25,	"
	282	1-4,	"
	282	20-25,	"
	283	1-6,	"
	296	13-23,	"
	298	1-4,	"
(cross-examination)	301	22-25,	"
	302	1-8,	"
	310	20-25,	"
	311	9-25,	"
	312	1-25,	"
	313	1-5,	"

NAME	PAGE	LINE
Holmes, George S., (continued)		
(cross-examination)	313	13-25, inclusive
	314	1-17, "
	315	1-11, "
	318	11-25, "
	321 to 323, inclusive	
	324	1-2, "
	325	6-22, "
	326	1-5, "
	327	6-25, "
	328	1-25, "
	331	4-25, "
	332	1-16, "
	334	23-25, "
	335	1-18, "
	335	22-25, "
	336	1-24, "
	338	1-8, "
	351	14-21, "
	352	2-13, "
	354	20-25, "
	355	1-13, "
	358	16-19, "
	369	24-25, "
	370	1-16, "
	371	14-19, "
	375	19-25, "
	376	1-3, "
	377	24-25, "
	378	1-25, "
	379	1-9, "
	385	1-25, "
	386	1-12, "
(re-direct examination)	388	15-25, "
	389	1-21, "
Shields, Lester		
(direct examination)	400	6-22. "
	410	24-25, "
	411	1-4, "

Respondent's Designation of Record

NAME	PAGE	LINE	
Shields, Lester, (continued)			
(cross-examination)	428	1-6,	inclusive
	456	6-10,	"
	457	7-11,	"
	457	24-25,	"
	458	1-4,	"
(re-cross examination)	470	1-5,	"
Edwards, Dewey			
(direct examination)	482	21-25,	"
(cross-examination)	494	1-15,	"
	495	1-5.	"
	496	18-22,	"
	502	10-23,	"
	503	19-25,	"
	504	1-25,	"
	511	15-25,	"
	512	1-16,	"
Lambert, Nelson D.			
(direct examination)	559	1-22,	"
	564	5-6,	"
(cross-examination)	568	13-16,	"
	574	1-4,	"
	575	20-25,	"
	576	1-12,	"
	576	25	
	577	1-22,	"
	578	5-9,	"
Carlson, Geraldine			
(direct examination)	602	5-14,	"
	604	3-25,	"
	605	1-2,	"
(cross-examination)	610	17-19,	"
	615	4-11,	"
Freeman, Earl			
(direct examination)	621	11-14,	"
	625	19-25,	"
	626	1-2,	"

Respondent's Designation of Record

NAME	PAGE	LINE	
Freeman, Earl, (continued)			
(direct examination)	630	25	inclusive
	631	1-8,	"
Collins, Ray M.			
(direct examination)	742	9-25,	"
	747	17-18,	"
	754	19-21,	"
	755	15-19,	"
	756	5-8,	"
	758	7-14,	"
	759	5-9,	"
(cross-examination)	771	10-20,	"
	773	15-17,	"
	774	6-23,	"
	775	21-25,	"
	776	1-19,	"
	780	1-25,	"
	781	1-12,	"
	781	21-25,	"
	782	1-24,	"
	783	3-25,	"
	784	1-16,	"
	785	22-25,	"
	786	6-25,	"
	788	2-25,	"
	789	1-25,	"
	790	1	
	801	4-8,	"
	801	23-25,	"
	802	1-3,	"
	802	24-25,	"
	803	1-17,	"
	805	11-25,	"
	806 to 810,	inclusive	
	811	1-10,	"
	813	1-8,	"
(re-cross examination)	842	4-18,	"
	846	10-16,	"

Respondent's Designation of Record

NAME	PAGE	LINE
Otis, Albert		
(direct examination)	857	4-19, inclusive
	858	17-25, "
	859 to 869, inclusive	
	871	17-25, "
	872 to 875, inclusive	
	876	1-23, "
	879	24-25, "
	880	1-21, "
Buckley, Claude F.		
(direct examination)	896	17-25, "
	897	1-24, "
(cross-examination)	902 to 904, inclusive	
	910	14-25, "
	917	11-20, "
Hulwick, Walter		
(direct examination)	921	6-14, "
	924	8-11, "
(cross-examination)	933	16-23, "
	936	5-25, "
	937	1-3, "
	939	5-22, "
Elkins, Forrest		
(direct examination)	943	4-23, "
	944	1-23, "
	947	1-25, "
	948	1
(cross-examination)	950	15-23, "
	962	17-20, "
	974	14-17, "
	975	14-23, "
Ernst, E. J.		
(cross-examination)	1016	17-25, "
	1017	1-4, "
	1018	23-25, "
	1019	1-8, "
	1019	17-23, "
	1020	21-24, "

NAME	PAGE	LINE
Durfey, Ernest		
(direct examination)	1026	1-25, inclusive
(cross-examination)	1034	23-25, "
	1035	1-25, "
	1036	1-5, "
	1058	23-25, "
	1059	1-2, "
Seeley, Earl		
(direct examination)	1060	12-25, "
	1061	1-17, "
	1063	1-25, "
Kidder, Russell H.		
(cross-examination)	1083	23-25, "
	1084 to 1085, inclusive	
	1086	1-2, "
	1109	6-20, "
	1111	12-21, "
Havelin, Charles		
(direct examination)	1292	8-23, "
	1293	1-22, "
	1304	19-25, "
	1305	1-10, "
	1322	1-20, "
Sill, H. D.		
(direct examination)	1385	1-10, "
	1398	1-25, "
	1399	1
	1400	1-25, "
	1401	1-18, "
(cross-examination)	1402	10-25, "
	1403	1-12, "
	1413	4-17, "
Zumpe, Milton C.		
(direct examination)	1438	1-13, "
	1442	3-21, "
	1446	1-11, "

NAME	PAGE	LINE
Edgell, Taylor		
(direct examination)	1451	15-18, inclusive
	1457	19-25, "
	1458	6-24, "
(cross-examination)	1461	16-23, "
Geo. W. Schmidt	1519	3-15, "
	1551	25
	1552 to 1555, inclusive	
	1556	1-16, "
	1557	6-7, "
	1557	19-25, "
	1558	1-25, "
	1559	1-4, "
(cross-examination)	1559	14-25, "
	1560	1-5, "
	1565	14-19, "
Marsh, James		
(direct examination)	1581	12-25, "
	1582	1
	1586	16-25, "
	1592	1-25, "
	1593	1-3, "
	1593	14-25, "
	1594	1-25, "
	1595	1-18, "
	1597	1-25, "
	1598	8-15, "
	1600	12-25, "
	1604	25
	1605	1-18, "
(cross-examination)	1616	19-25, "
	1617	1-2, "
Henderson, F. M.		
(direct examination)	1659	18-25, "
	1660	1-7, "

NAME	PAGE	LINE
Henderson, F. M., (continued)		
(cross-examination)	1668	19-25, inclusive
	1669	1-15, "
	1686	2-25, "
	1687	1-25, "
	1688 to 1689, inclusive	
	1690	1-5, "
	1691	7-17, "
	1692	14-21, "
DeQuine, G. F.		
(direct examination)	1738	1-11, "
	1741	7-25, "
	1742	1-18, "
	1745	4-25, "
	1746 to 1749, inclusive	
	1750	1-11, "
	1828	9-24, "
	1831	12-25, "
	1832	1-25, "
	1833	1-6, "
Livelsberger, Earl		
(direct examination)	1839	1-25, "
	1850	18-25, "
	1851	1-25, "
	1852	1-25, "
	1853	1-20, "
LaVelle, William		
(direct examination)	1953	18-25, "
	1954	1-7, "
Daniels, Clarence		
(direct examination)	1966	1-21, "
	1967	3-25, "
	1968	1-6, "
Miles, Frank		
(cross-examination)	1976	13-25, "
Betley, Jack	1982	6-25, "
(direct examination)	1986	4-25, "
	1987	1-5, "
(cross-examination)	1995	1-25, "

NAME	PAGE	LINE
Lillard, Ross		
(direct examination)	2015 to 2024,	inclusive
	2025	1-18, "
Peach, Kenneth A.		
(direct examination)	2037 to 2040,	inclusive
	2041	1-15, "
Carlton, Glenn		
(direct examination)	2060	1-10, "
	2071	12-24, "
(cross-examination)	2084	20-25, "
	2085	1-4, "
Calvert, Charles B.		
(direct examination)	2131	11-25, "
	2132 to 2134,	inclusive
	2139	5-21, "
	2166 to 2168,	inclusive
	2170	1-25, "
English, Thomas F.		
(direct examination)	2181 to 2190,	inclusive
Collins, Ray M.		
(direct examination)	2200 to 2202,	inclusive

2. Pages of the transcript as follows: Beginning at line 14, page 1577, to line 5, page 1581, inclusive.

3. The following exhibits:

(a) Board's Exhibit No. 5, excepting pages 94 and 95 containing a roster of officers.

(b) Board's Exhibits Nos. 6, 7, 11, 12 and 13.

(c) Respondent's Exhibits Nos. 1, 2, 3 and 27.

Dated at South Bend, Indiana, this 2nd day of January, 1941.

ELI F. SEEBIRT,
MURRAY SEASONGOOD,
Attorneys for Respondent,
Indiana & Michigan Electric Company.

UNITED STATES OF AMERICA

BEFORE THE

NATIONAL LABOR RELATIONS BOARD

THIRTEENTH REGION

In the Matter of INDIANA & MICHIGAN ELECTRIC COMPANY, and INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL B-9.	Case No. XIII C685

AMENDED CHARGE

Board's Exhibit No. 1-A

(Filed November 12, 1938)

Pursuant to Section 10 (b) of the National Labor Relations Act, the undersigned hereby charges that INDIANA & MICHIGAN ELECTRIC COMPANY, W. Colfax Avenue, South Bend, Indiana, has engaged in and is engaging in unfair labor practices within the meaning of Section 8, subsections (1) and (2) and (3) of said Act, in that the company, through its officers and agents, questioned employees concerning their union affiliations, warned employees against activities on behalf of unions with outside affiliations, discouraged membership in unions with outside affiliations and by other acts has interfered with the rights guaranteed its employees by Section 7 of the Act;

the company during the month of May 1937, through its officers and agents, aided in the formation of and from that time to the present has sponsored, contributed to the support of, financial and otherwise, and has dominated and interfered with a labor organization of its employees known as Michiana Electrical Utility Workers Association. The company in many ways favored those of its employees who were members of this organization. The company, through its officers and agents, coerced its

employees to join and pay dues in said Michiana Electrical Utility Workers Association.

the company, through its officers and agents, discharged Forrest Elkins on or about December 24, 1937, for the reason that he was a member of and active in the organizing work of the International Brotherhood of Electrical Workers.

The undersigned further charges that said unfair labor practices are unfair labor practices affecting commerce within the meaning of said Act.

Name and address of person or labor organization making the charge. (If made by a labor organization, give also the name and official position of the person acting for the organization.)

(Signed) SAMUEL GUY,
Business Manager,
INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL B-9,
130 N. Wells St., Chicago, Ill.
Tel.: Franklin 1411.

Subscribed and sworn to before me this 12th day of November, 1938 at Chicago, Illinois.

(SEAL) (Signed) THERESA O'KEEFE, *Notary Public.*

COMPLAINT

Board's Exhibit No. 1-A

(Dated November 12, 1938)

It having been charged by International Brotherhood of Electrical Workers, Local B-9, hereinafter called the union, that Indiana & Michigan Electric Company, hereinafter called respondent, has engaged in and is now engaging in certain unfair labor practices affecting commerce, as set forth and defined in National Labor Relations Act, 49 Stat. 449, hereinafter called the Act, the National Labor Relations Board, by the Regional Director for the Thirteenth Region, as agent for the National Labor Relations Board, designated by the National Labor Relations Board Rules and Regulations, Series 1, as amended, hereby alleges:

1. Respondent is and has been since 1925 a corporation organized under and existing by virtue of the laws of the State of Indiana, having its principal office in the City of South Bend, County of St. Joseph, State of Indiana.

2. Respondent is now and has been at all times hereinafter mentioned engaged in the generation, transmission, distribution and sale of electrical energy, and in a limited way in the sale of electrical appliances. Respondent owns and operates four hydro electric generating stations on the St. Joseph River located at Elkhart, Indiana; Twin Branch, Indiana; Buchanan, Michigan; and Berrien Springs, Michigan and operates a small hydro electric station on the Paw Paw River at Hartford, Michigan. Respondent also owns and operates two steam generating plants, one at Twin Branch, Indiana and one at South Bend, Indiana.

3. Respondent in the course and conduct of its business causes and has continuously caused large quantities of electrical energy to be transmitted in interstate commerce from and through States of the United States other than the State of Indiana to respondent's system described in paragraph 2 hereof, and large quantities of

electrical energy to be transmitted in interstate commerce from respondent's system described in paragraph 2 hereof, in the State of Indiana, to, into and through States of the United States other than the State of Indiana.

4. The union is a labor organization, as defined in Section 2, Subdivision (5) of the Act.

5. Respondent, by its officers and agents, while engaged in the operations as described above, on or about May 1, 1937, did initiate, foster and promote among its employees a labor organization known as Michiana Electrical Utility Workers Association. From on or about May 1, 1937 down to and including the date of this Complaint, respondent, through its officers and agents, has advised, urged, threatened and coerced its employees to join and pay dues in said Michiana Electrical Utility Workers Association, has in many ways favored members in good standing of said Michiana Electrical Utility Workers Association, has contributed to the support of, financial and otherwise, and has dominated and interfered with the administration of, said Michiana Electrical Utility Workers Association.

6. The acts of respondent, set forth in paragraph 5 above, constitute unfair labor practices within the meaning of Section 8, Subdivision (2) of the Act.

7. Respondent, by its officers and agents, while engaged in the operations described above, did on or about December 24, 1937 discharge Forrest Elkins for the reason that he had joined and assisted the union and engaged in concerted activities with other employees for purposes of collective bargaining and other mutual aid and protection.

8. By the act set forth in paragraph 7 above, respondent did discriminate in regard to tenure of employment of said Forrest Elkins and did discourage and is discouraging membership in the union, and did thereby engage in unfair labor practices within the meaning of Section 8, Subdivision (3) of the Act.

9. Respondent, by its officers and agents, while engaged

in the operations as described above, from on or about April 1, 1937, down to and including the date of filing of this Complaint, did question its employees concerning their union affiliations, did advise, urge and warn its employees to refrain from becoming or remaining members of the union, or of any union with outside affiliations, and did discourage membership in unions with outside affiliations.

10. By the acts set forth in paragraphs 5, 7 and 9 above, and by each of them, and by other acts, respondent did interfere with, restrain and coerce and is interfering with, restraining and coercing its employees in the exercise of the rights guaranteed to them in Section 7 of the Act, and did thereby engage in and is thereby engaging in unfair labor practices within the meaning of Section 8, Subdivision (1) of the Act.

11. The acts of respondent, set forth in paragraphs 5, 7 and 9 above, occurring in connection with the operations of respondent described in paragraphs 2 and 3 above, have a close, intimate and substantial relation to trade, traffic and commerce among the several States, and have led to and tend to lead to labor disputes, burdening and obstructing such commerce and the free flow of such commerce.

12. The acts of respondent, described and set forth in paragraphs 5, 7 and 9 above, constitute unfair labor practices affecting commerce within the meaning of Section 8, Subdivisions (1), (2) and (3), and Section 2, Subdivisions (6) and (7) of the Act.

WHEREFORE, the National Labor Relations Board, on this 12th day of November, 1938, issues its Complaint against the Indiana & Michigan Electric Company, respondent herein.

NOTICE OF HEARING

PLEASE TAKE NOTICE that on the 28th day of November, 1938, at 10 o'clock in the forenoon, in the Federal Courtroom, Federal Building, South Bend, Indiana, a hearing

will be conducted before the National Labor Relations Board by a Trial Examiner to be designated by it in accordance with the National Labor Relations Board Rules and Regulations—Series 1, as amended—Article IV, Section 3, and Article II, Section 23, on the allegations set forth in the Complaint herein, at which time and place you will have the right to appear in person, or otherwise, and give testimony.

You are further notified that you have the right to file with the Regional Director for the Thirteenth Region, with offices at Room 1558, 20 North Wacker Drive, Chicago, Illinois, acting in this matter as the agent of the National Labor Relations Board, an answer to the said Complaint, within five days from the service thereof.

Enclosed herewith for your information is a copy of the Rules and Regulations—Series 1, as amended—made and published by the National Labor Relations Board pursuant to the authority granted in the National Labor Relations Act. Your attention is particularly directed to Article II of said Rules and Regulations.

IN WITNESS WHEREOF the National Labor Relations Board has caused this, its Complaint and Notice of Hearing, to be signed by the Regional Director for the Thirteenth Region on this 12th day of November, 1938.

(Signed) LEONARD C. BAJORK,
Regional Director,
Thirteenth Region,
National Labor Relations Board

20 North Wacker Drive
Chicago, Illinois
November 12, 1938.

PETITION AND MOTION OF RESPONDENT FOR EXTENSION OF TIME IN WHICH TO ANSWER AND ALSO FOR EXTENSION OF TIME FOR HEARING

Board's Exhibit No. 1-C

(Dated November 16, 1938)

The Indiana & Michigan Electric Company, respondent in the above entitled matter, respectfully petitions your Board and represents:

That a copy of this petition was first served upon this respondent on Tuesday, November 15, 1938. That at the time the notice was received at the office of this company, its vice-president and general manager, Mr. Thomas F. English, was and still is in the City of New York, State of New York, where he will be for several days; also the matters of this respondent with respect to any labor controversy or dispute with employees have heretofore been handled by Orlo R. Deahl a member of the legal firm of Seebirt, Oare & Deahl of South Bend, Indiana, and also he will represent this respondent in this matter; that said Orlo R. Deahl has been sick and confined to his home for the last past two days and will probably be unable to give this matter any attention for the next several days, and that the time for filing an answer to the petition herein should be extended to and including November 25, 1938 and the time for hearing, which is now set for November 28, 1938, should be continued until some time in the early part of December, 1938, when this respondent and its said attorney will be able to give the matter its attention.

INDIANA & MICHIGAN ELECTRIC COMPANY,
By (Signed) CHAS. B. CALVERT,
Its Assistant Secretary.

STATE OF INDIANA, }
ST. JOSEPH COUNTY, } ss:

Charles B. Calvert, being duly sworn upon his oath, deposes and says that he is Assistant Secretary of the Indiana & Michigan Electric Company, and that he exe-

cuted the foregoing motion and petition; that the statements therein contained are true.

IN WITNESS WHEREOF, he has hereunto set his hand this 16th day of November, 1938.

(Signed) CHARLES B. CALVERT.

Subscribed and sworn to before me, a Notary Public in and for said County and State, this 16th day of November, 1938.

(SEAL) (Signed) MILDRED RICHARDSON,
Notary Public.

My commission expires April 20, 1942.

ORDER

Board's Exhibit No. 1-D

(Dated November 18, 1938)

This matter coming before the Regional Director for the Thirteenth Region, National Labor Relations Board, upon the verified petition and motion of respondent herein by Charles B. Calvert, its Assistant Secretary, and due consideration having been given the same,

IT IS ORDERED that the portion of the petition and motion requesting an extension of time for the filing of an answer to and including November 25, 1938 be and the same is hereby allowed.

IT IS FURTHER ORDERED that the portion of the petition and motion requesting postponement of the hearing to a date in the early part of December, 1938 be and the same is hereby denied.

Signed at Chicago, Illinois this 18th day of November, 1938.

(Signed) LEONARD C. BAJORK,
Regional Director.

ANSWER OF RESPONDENT INDIANA & MICHIGAN ELECTRIC COMPANY

Board's Exhibit No. 1-E

(Sworn to November 23, 1938)

Comes now the Indiana & Michigan Electric Company, the above named respondent, and for answer to the complaint filed in the above entitled proceedings by the National Labor Relations Board, says:

1. That it denies the charge that it did on or about May 1, 1937, or at any subsequent time, initiate, foster and promote among its employees a labor organization known as Michiana Electrical Utility Workers Association.

2. That it denies the charge that it did from on or about May 1, 1937 down to and including the date of filing of said complaint, through its officers and agents, advise, urge, threaten and coerce its employees or any of them to join and pay dues in said Michiana Electrical Utility Workers Association.

3. That it denies the charge that it has in any way favored members in good standing of said Michiana Electrical Utility Workers Association because of their membership in said association.

4. That it denies the charge that it has contributed to the support, financial or otherwise, of said Michiana Electrical Utility Workers Association.

5. That it denies the charge that it has in any way dominated and interfered with the administration of said Michiana Electrical Utility Workers Association.

6. That it denies the charge that it has been guilty of any unfair labor practices within the meaning of any section of the National Labor Relations Act, 49 Stat. 449.

7. That it denies the charge that it did on or about December 24, 1937 discharge Forest Elkins for the reason that he had joined and assisted the International Brotherhood of Electrical Workers, Local B-9, and engaged in concerted activities with other employees for purposes of collective bargaining and other mutual aid and protection.

8. That it denies the charge that it did discriminate in regard to tenure of employment of said Forest Elkins.

9. That it denies the charge that it discouraged and is discouraging membership in International Brotherhood of Electrical Workers, Local B-9.

10. That it denies the charge that from on or about April 1, 1937 down to and including the date of filing of said complaint, it questioned any of its employees concerning their union affiliations; that it advised, urged and warned its employees to refrain from becoming or remaining members of the Union or of any Union with outside affiliations, and that it discouraged membership in Unions with outside affiliations.

11. That it denies the charge that it did by any act interfere with, restrain and coerce and that it is by any act interfering with, restraining and coercing its employees in the exercise of the rights guaranteed to them in Section 7 of said National Labor Relations Act.

12. That it is without knowledge that it is engaged in interstate commerce in the sense and to the extent that it is governed by the provisions of the National Labor Relations Act aforesaid, and that any act charged constitutes unfair labor practice affecting commerce within the meaning of any section of said National Labor Relations Act.

WHEREFORE, said respondent, Indiana & Michigan Electric Company, asks that the complaint of the National Labor Relations Board against it, and all charges therein contained, be dismissed.

(Signed) THOS. F. ENGLISH,
Vice-President and General Manager of Indiana & Michigan Electric Company,
Post Office Address: South Bend, Indiana.

(Signed) ELI F. SEEBIRT,

(Signed) ORLO R. DEAHL,
of the law firm of Seebirt, Oare & Deahl, 650 Associates Building, South Bend, Indiana,
Attorneys for Respondent.

STATE OF INDIANA, }
ST. JOSEPH COUNTY, } ss:

On this 23rd day of November, 1938, before me, a notary public in and for said County, personally appeared Thomas F. English, who, being by me duly sworn, says that he is vice-president and general manager of the Indiana & Michigan Electric Company; that he signed the foregoing answer in behalf of said company and is duly authorized so to do; that he has read the answer by him so signed, knows well the contents thereof, and that the statements therein contained are true, according to his best knowledge, information and belief.

(SEAL) (Signed) ORLO R. DEAHL, *Notary Public.*

My commission expires June 8, 1939.

MOTION OF RESPONDENT, INDIANA & MICHIGAN ELECTRIC COMPANY, TO MAKE COMPLAINT MORE SPECIFIC

Board's Exhibit No. 1-F

Now comes respondent, Indiana & Michigan Electric Company, by its attorneys, and moves the Court for an order requiring the charges in the complaint in the above entitled matter to be made more definite and certain in the following particulars, to-wit:

1. By alleging the acts committed by the respondent to initiate, foster, and promote among its employees a labor organization known as Michiana Electrical Utility Workers Association, and when and where and through whom any such acts were committed.

2. By alleging the names of respondent's officers and agents through whom it advised, urged, threatened and

coerced its employees to join and pay dues in said Michiana Electrical Utility Workers Association.

3. To allege the name or names of the employees respondent, through its officers and agents, advised, urged, threatened and coerced to join and pay dues in said Michiana Electrical Utility Workers Association.

4. To allege the particular instances and in what manner the respondent favored members in good standing of said Michiana Electrical Utility Workers Association.

5. By alleging how, when and in what amount respondent contributed to the financial support of said Michiana Electrical Utility Workers Association.

6. By alleging how, when and in what respect said respondent contributed otherwise to said Michiana Electrical Utility Workers Association.

7. By alleging the acts committed by respondent to support the charge that it has dominated and interfered with the administration of said Michiana Electrical Utility Workers Association, and when and through whom such acts were committed.

8. By alleging the act or acts committed by respondent as a basis for the charge that it has discouraged and is discouraging membership in the International Brotherhood of Electrical Workers, Local B-9, and when and through whom such acts were committed.

9. By alleging the names of respondent's employees who were questioned by respondent concerning their union affiliations, or advised, urged or warned by respondent to refrain from becoming or remaining members of the union, or of any union with outside affiliations, and who it was that committed such acts on behalf of respondent and the approximate dates that such acts were committed.

10. By alleging the acts done or committed by respondent to discourage membership of its employees in unions with outside affiliations, and the name or names of such persons committing such acts on behalf of respondent and the time or times when such acts were committed.

11. By alleging the acts of the respondent, by whom and when committed, showing or tending to show that respondent interfered with, restrained and coerced and is interfering with, restraining and coercing its employees in the exercise of the rights guaranteed to them in Section 7 of the National Labor Relations Act, and showing that it engaged in and is engaging in unfair labor practices within the meaning of Section 8, Subdivision (1) of said Act.

INDIANA & MICHIGAN ELECTRIC COMPANY,
By (Signed) ELI F. SEEBIRT,
(Signed) ORLO R. DEAHL,
of the Law firm of Seebirt, Oare & Deahl, attorneys.

MEMORANDUM

In Paragraph (c) of Section 4 of Article 2 of the rules and regulations as amended of the National Labor Relations Board, it is provided that the complaint of charges shall contain "a clear and concise statement of the facts constituting the alleged unfair labor practice affecting commerce, particularly stating the names of the individuals involved and the time and place of occurrance."

An examination of Paragraphs 5, 6, 8, 9 and 10 of the complaint clearly shows a failure of compliance with this rule of the National Labor Relations Board.

The obvious purpose of this rule of the Board is to require such a statement of facts in the complaint as will enable the respondent to make an intelligent investigation and preparation of its case. An examination of these Paragraphs 5, 6, 8, 9 and 10 shows that the charges are made in such general language that it leaves the respondent utterly without any reasonable basis for an investigation of the facts pertaining to such charges. This is especially apparent when it is remembered that the respondent has in excess of 1,000 employees.

Paragraph 5 of the complaint charges that the re-

spondent initiated, fostered and promoted among its employees the Michiana Electrical Utility Workers Association and that it advised, urged, threatened and coerced its employees to join such association. From these charges the respondent has no way of knowing in what manner it is supposed to have done these things, and it is without any knowledge or means of knowledge as to the employees it is supposed to have contacted for such purposes. To investigate the facts pertaining to such charges, it would be necessary for respondent to interrogate all of its employees, which, of course, is most impracticable, and affords no assurance that through such investigation it would learn the names of the employees it is supposed to have contacted for such purposes. It is obvious that for a preparation of its case, it must have the names of such persons it is supposed to have contacted, so that a fair investigation may be made to ascertain the evidence available to be presented in contradiction of such charges.

Paragraph 5 also states that the respondent has "in many other ways favored members in good standing of said Michiana Electrical Utility Workers Association". This, of course, leaves respondent without any idea whatever as to what may be the basis for this charge, and what evidence to anticipate may be introduced for the purpose of supporting such charge. Paragraph 5 also states that respondent has contributed to the support of said association financial "and otherwise". Here again it is perfectly obvious that respondent is left without the slightest suggestion as to what evidence may be introduced in support of the charge that it has "otherwise" contributed to the support of said association. Again in Paragraph 5 it is charged that respondent "has dominated and interfered with the administration of" said association and here again there is absolutely no suggestion or indication as to how, when or in what manner respondent is supposed to have dominated or interfered with the administration of said association.

In Paragraph 8 of the complaint it is charged that respondent is discouraging membership in the interna-

tional Brotherhood of Electrical Workers, Local B-9, and it is not alleged what acts are being committed by respondent for such purpose.

In Paragraph 9 of the complaint it is charged that the respondent questioned its employees concerning their union affiliations and advised, urged and warned them to refrain from becoming or remaining members of the union or of any union with outside affiliations, and discouraged membership in unions with outside affiliations. Here again no names of employees are given and no mention is made of the time and place of the acts relied upon to support such charges.

In Paragraph 10 of the complaint it is charged that by the acts set forth in Paragraphs 5, 7 and 9 thereof and by each of them "and by other acts" respondent interfered with, restrained, coerced and is interfering with, restraining and coercing its employees in the exercise of the rights guaranteed to them in Section 7 of the National Labor Relations Act, and is engaging in unfair labor practices within the meaning of said Act. By use of the words "and by other acts", the respondent is left entirely without any suggestion as to what evidence it may be called upon to meet in the defense of these charges.

It is respectfully submitted that the complaint does not contain a clear and concise statement of the facts constituting the alleged unfair labor practice affecting commerce and particularly stating the names of the individuals involved and the time and place of occurrence, and that it is absolutely necessary that said complaint be made more definite and certain in the particulars hereinabove set out in order that respondent may be reasonably and fairly advised of the charges against it and so that it can proceed with an intelligent and proper preparation of its defense to these charges.

It is further respectfully submitted that a hearing on this complaint should be postponed until such time as an amended complaint, to conform with this motion, has been filed and respondent given a reasonable opportunity

to investigate the facts pertaining to such charges and to prepare its defense.

INDIANA & MICHIGAN ELECTRIC COMPANY,
By (Signed) ELI F. SEEBIRT,
(Signed) ORLO R. DEAHL,
of the firm of Seebirt, Oare & Deahl,
Attorneys.

MOTION OF RESPONDENT, INDIANA & MICHIGAN ELECTRIC COMPANY, FOR CONTINUANCE

Board's Exhibit No. 1-G

Comes now the respondent, Indiana & Michigan Electric Company, and files its motion for continuance in time for hearing of the above entitled matter.

As grounds for said motion for continuance, said respondent represents and shows that a copy of the complaint herein was first served upon this respondent on Tuesday, November 15, 1938; that at said time, its vice-president and general manager, Mr. Thomas F. English, was and for several days thereafter continued to be absent from the city; that respondent's labor matters have heretofore been handled by Orlo R. Deahl, a member of the law firm of Seebirt, Oare & Deahl of South Bend, Indiana, who is also representing the respondent in this matter; that at the time a copy of said complaint was served, said Orlo R. Deahl was ill and confined to his home, and was unable to give any attention to the matter until approximately four days thereafter; that the charges in said complaint are so general that respondent has filed a motion to require the same to be made more specific; that in the absence of said

charges being made more specific, it has been necessary for respondent to make a diligent canvass for the purpose of ascertaining what the specific charges may be and the evidence introduced in support thereof before it could acquire evidence to present in defense of said charges; that to date respondent has been unable to complete its canvass of the specific charges that may be presented against it and the evidence in support thereof, and has been afforded insufficient time within which to ascertain available evidence to be presented in defense of said charges, and insufficient time within which to prepare its defense in this case.

WHEREFORE, respondent respectfully prays that a continuance of the hearing in this matter be ordered until such time as will afford respondent a reasonable opportunity to prepare its defense to the charges of the complaint filed herein.

INDIANA & MICHIGAN ELECTRIC COMPANY,
By (Signed) ELI F. SEEBIRT, and
(Signed) ORLO R. DEAHL,
Members of the law firm of Seebirt, Oare & Deahl, its attorneys.

ORDER DESIGNATING TRIAL EXAMINER

Board's Exhibit No. 1-H.

(Dated November 25, 1938)

A charge having been filed in this matter, and it having appeared to the Regional Director of the Thirteenth Region that a proceeding in respect thereto should be instituted, and the Board having considered the matter and being advised in the premises,

IT IS HEREBY ORDERED that TILFORD E. DUDLEY act as Trial Examiner in the above case and perform all the duties and exercise all the powers granted to trial examiners under the Rules and Regulations—Series 1, as amended, of the National Labor Relations Board.

Dated, Washington, D. C., November 25, 1938.

By direction of the Board:

(SEAL) GEORGE O. PRATT,
Chief Trial Examiner.

STIPULATION

Board's Exhibit No. 2

(Dated November 28, 1938)

It is hereby stipulated by and between counsel for Indiana & Michigan Electric Company and counsel for National Labor Relations Board that the following data concerning the business of Indiana & Michigan Electric Company are true and correct:

1. Indiana & Michigan Electric Company is a corporation organized and existing under the laws of the State of Indiana, having been incorporated February 21, 1925. It is duly and legally authorized to transact business within the State of Michigan. Its principal place of business is in South Bend, Indiana. It is engaged in the genera-

tion, transmission, distribution and sale of electrical energy, and in a limited way, in the sale of electrical appliances.

During the calendar year 1937 the company sold 1703 electric ranges of a total value of Two Hundred Sixteen Thousand, Two Hundred Twenty-one Dollars, Seven Cents ($216,221.07), sold 439 electric water heaters of a total value of Thirty-eight Thousand, Five Hundred Twenty-seven Dollars, Eighty-four Cents ($38,527.84) and miscellaneous items of merchandise totalling Three Thousand, Seven Hundred Sixty-six Dollars, Twenty-one Cents ($3,766.21) in value. The electric ranges and water heaters were purchased from Westinghouse Electric & Mfg. Company through their South Bend, Indiana distributor, McCaffery Company, and Edison General Electric Appliance Company through South Bend Electric Company. All deliveries were made locally by the distributors with the exception of carload shipments purchased. These were invoiced by the distributor but were shipped direct from the factories at Mansfield, Ohio and Chicago, Illinois to Indiana & Michigan Electric Company at South Bend, Indiana.

Indiana & Michigan Electric Company owns and operates four hydro electric generating stations on the St. Joseph River located at Elkhart, Indiana; Twin Branch, Indiana; Buchanan, Michigan and Berrien Springs, Michigan. It also operates a small hydro electric station on the Paw Paw River at Hartford, Michigan. It owns and operates two steam generating plants, one at Twin Branch, Indiana operating continuously throughout the year and one at South Bend, Indiana operated only part of the year. It has interconnections, for the purpose of exchange of energy, with the Ohio Power Company by means of a 132 kv transmission line with interconnection point at the State line between the States of Ohio and Indiana East of Fort Wayne, Indiana, and with the Northern Indiana Public Service Company by means of a 132 kv line near New Carlisle, Indiana. It owns and operates a 132 kv line from Fort Wayne to Marion,

Indiana and a short distance beyond Marion. Various 27 kv lines interconnect its various plants and are used for distribution throughout the territory in which it serves.

Indiana & Michigan Electric Company serves directly electricity for light, heat and power the Cities of South Bend, Elkhart, Ligonier, Butler and Mishawaka and the Towns of Osceola, Lakeville, Roseland, Lapaz, New Carlisle, Grabill, Woodburn and St. Joe in the State of Indiana; the Cities of Benton Harbor, St. Joseph, Buchanon, and in a limited extent the City of Niles, in the State of Michigan, and the Villages of Stevensville, Baroda, Bridgman, Watervliet, Bangor, Coloma, Hartford, Shoreham, New Buffalo, Galien, Three Oaks, Berrien Springs and Eau Claire in the State of Michigan. It also furnishes electrical service to rural communities adjacent to the municipalities above listed. Its operations are confined to the Counties of La Porte, Marshall, St. Joseph, Elkhart, Noble, Allen and De Kalb in the State of Indiana, and to the Counties of Berrien, Cass and Van Buren in the State of Michigan. The Company furnishes to the City of Niles, Michigan a portion of the city's electrical requirements for distribution through its municipal plant and furnishes to the City of Mishawaka for distribution through the city's distribution system, all of the city's electrical requirements. It also wholesales to the Town of New Carlisle.

2. Excepting water for the operation of hydro electric plants and for condensing purposes in steam plant, coal is the only raw material in any substantial quantity used in our industry. The cost of coal used in our industry for the period June 1, 1937 to May 31, 1938, was Seven Hundred Five Thousand, Nine Hundred Four Dollars, Twelve Cents ($705,904.12), of which sum Six Hundred Eighty-five Thousand, Eleven Dollars, Twenty-three Cents ($685,011.23), or ninety-seven per cent (97%), was for coal produced and shipped from mines within the State of Indiana, and Twenty Thousand, Eight Hundred Ninety-two

Dollars, Eighty-nine Cents ($20,892.89), or three per cent (3%), was for coal produced and shipped from mines without the State of Indiana.

3. Indiana & Michigan Electric Company has three operating divisions, as follows:

(a) South Bend Division with its main office in the City of South Bend, Indiana.

(b) The Elkhart Division with its main office in the City of Elkhart, Indiana.

(c) The Benton Harbor Division with its main office in the City of Benton Harbor, Michigan.

All Division Managers are directly responsible to the Company's Vice President and General Manager who is located at the principal office of the Company in the City of South Bend, Indiana. Each Division Manager is chargeable with the direction of the Company's business in his respective district and there is no interchange of control between the divisions.

4. The total operating revenue of the Company for the calendar year 1937 was $8,793,350.88 of which sum $6,717,087.38, or approximately 76.4% was revenue derived from business within the State of Indiana, and $2,076,263.50, or approximately 23.6% was revenue derived from business in states other than Indiana. Approximately 717,709,057 kilowatt hours of electrical energy were sold by the Company during the calendar year 1937.

5. Indiana & Michigan Electric Company supplies light and power requirements to various railroads, telegraph and telephone companies, United States Post Offices, manufacturing concerns, educational institutions, etc., the larger of which concerns are the following:

South Bend, Indiana

Northern Indiana Railway, Inc.
Bendix Products Corporation
O'Brien Varnish Company

Drewrys Limited, U. S. A., Inc.
Wilson Bros.
Oliver Hotel
Robertson Bros. Department Store
University of Notre Dame, Notre Dame, Ind.

MISHAWAKA, INDIANA
American Foundry & Equipment Co.
United States Rubber Products, Inc.
Volney Felt Mills, Inc.

ELKHART, INDIANA
Adams & Westlake
C. G. Conn, Ltd.
Foster Machine Company
Miles Laboratories, Inc.
New York Central Railroad Co.

LIGONIER, INDIANA
Lyon & Greenleaf

ST. JOSEPH, MICHIGAN
Cooper Wells
Industrial Rubber Company
1900 Corporation
Auto Specialties Company

BENTON HARBOR, MICHIGAN
Benton Harbor Malleable Industries
Superior Steel & Malleable Corp.
Remington-Rand, Inc.

NILES, MICHIGAN
Kawneer Manufacturing Co.
National Standard
Simplicity Pattern Company
Michigan Central Railway

BUCHANAN, MICHIGAN
Clark Equipment Company

THREE OAKS, MICHIGAN
Warren Featherbone Company

6. Electrical energy was transferred across State lines to and from the transmission system of Indiana & Michigan Electric Company during the calendar year 1937 as follows:

TRANSFERRED FROM	KILOWATT HOURS	
Ohio to Indiana (Lima Line)	392,837,980	
Ohio to Indiana (Hicksville Line)	3,318,732	396,156,712
Indiana to Ohio (Lima Line)	8,000,000	8,000,000
Indiana to Michigan (Twin Branch-Benton Harbor Line)	52,781,000	
Indiana to Michigan (South Bend Sub-Niles Line)	15,462,000	
Indiana to Michigan (LaPorte-Buchanan Line)	3,000	
Indiana to Michigan (LaPorte-Galien Line)	33,000	68,279,000
Michigan to Indiana (Benton Harbor-Twin Branch Line)	243,000	
Michigan to Indiana (Niles-South Bend Sub Line	3,091,000	
Michigan to Indiana (Buchanan-LaPorte Line)	6,354,100	
Michigan to Indiana (Galien-La-Porte Line)	3,040,920	12,729,020

Electrical energy transferred from Ohio to Indiana was generated at the following plants of the Ohio Power Company:

GENERATING STATION	LOCATION
Ballville Plant	Fremont, Ohio
Lima Plant	Lima, Ohio
Newark Plant	Newark, Ohio
Philo Plant	Philo, Ohio
Canton Plant	Canton, Ohio
Windsor Plant	Power, West Virginia

It is further stipulated that either party may introduce evidence in addition to or in amplification of the above information.

Dated at South Bend, Indiana, this 28th day of November, 1938.

INDIANA & MICHIGAN ELECTRIC COMPANY,
By SEBBIRT, OARR & DRAHL,
Attorneys.

STEPHEN M. REYNOLDS,
Attorney,
National Labor Relations Board.

INTERMEDIATE REPORT

(Filed July 27, 1939)

Upon charges duly made and acting pursuant to proper authority, the National Labor Relations Board,[1] by Leonard C. Bajork, its Regional Director for the Thirteenth Region, issued its complaint against the Indiana & Michigan Electric Company, the respondent herein. The complaint and notice of hearing thereon were duly served upon the respondent.

The complaint, as amended at the hearing, alleged that respondent had engaged in unfair labor practices affecting commerce within the meaning of Section 8 (1), (2), and (3) and Section 2 (6) and (7) of the Act. The respondent's answer denied that it had engaged in any unfair labor practices.

The undersigned, as duly designated Trial Examiner of the Board, conducted a hearing from November 28, 1938

[1] The National Labor Relations Board is herein referred to as the Board, the National Labor Relations Act as the Act, the International Brotherhood of Electrical Workers, Local No. B-9 as the Union, the Indiana & Michigan Electric Company as the Respondent, and the Michiana Electrical Utility Workers Association as the Association.

through December 9, 1938, at South Bend, Indiana. All parties were afforded an opportunity to participate in the hearing, to call, examine and cross-examine witnesses and to introduce other evidence. Respondent and the Board appeared at the hearing by counsel; the union appeared by its business manager; all these parties participated fully therein. At the conclusion of the hearing the parties were afforded a reasonable opportunity to argue orally before the undersigned and to file briefs with him, and were advised by the undersigned that they would be given an opportunity for oral argument and for filing briefs before the Board upon request made to the Board within ten days from the receipt of the Intermediate Report. A brief was subsequently submitted by counsel for the respondent; it has received full consideration from the undersigned.

Prior to the hearing, respondent filed with the Regional Director a petition for additional time in which to file an answer, and for a continuance of the hearing. The former was granted; the latter was denied. At the hearing, the motion for a continuance was renewed and an additional motion to make the complaint more definite and certain was made. Both motions were denied by the undersigned. At the close of the Board's case, respondent moved to dismiss the complaint. At the close of its own case, respondent moved to strike evidence pertaining to events occurring before July 5, 1935. Both motions were denied. At the close of the hearing, respondent moved to dismiss the complaint on six different grounds. The motion was then denied in respect to three of the grounds and decision was reserved in the remaining three particulars. The motion is hereby denied as to two of these particulars but it is granted in so far as it pertains to the discharge of Forrest Elkins, as hereinafter set forth.

Upon the record thus made and from his observation of the witnesses, the undersigned makes, in addition to the above, the following specific findings of fact:

Findings of Fact

I. *The Respondent*

1. The respondent is an Indiana corporation with its main place of business at South Bend, Indiana. It is engaged in the generation, transmission, distribution and sale of electrical energy, and, in a limited way, in the sale of electrical appliances. It owns and operates four hydro-electric generating stations; operates a fifth hydro-electric station, and also owns and operates two steam generating plants. Its operations, including the distribution and sale of electricity, are largely confined to seven counties in northern Indiana and three counties in southern Michigan. (Board Exhibit No. 2.)

2. During the calendar year of 1937 respondent's total operating revenue was $8,793,350.88, of which 23.6 per cent was derived from business in States other than Indiana. It sells electrical service to several cities, railroads and to many industrial concerns as well as to the general consuming public. The electrical appliances sold by respondent in 1937 totalled $258,515.12 in value. All respondent's common stock is owned by the American Gas & Electric Company of New York, except for the qualifying shares held by the directors. Issues of preferred stock and of bonds are held largely by the general public, but partially by the American Gas & Electric Company.

II. *The Labor Organizations Involved*

3. The International Brotherhood of Electrical Workers is composed of electrical wage workers and among its objects are the settlement of disputes with employers, the reduction of working hours, the procurement of adequate pay and the promotion of the welfare of its members (Board Exhibit No. 3). It is affiliated with the American Federation of Labor. Local B-9 represents workers in northern Illinois and Indiana. It has approximately 2500 members. It is a labor organization within the meaning of the Act.

4. The Michiana Electrical Utility Workers' Association membership is limited to respondent's employees who were born in the United States or have taken out first citizenship papers. Its purpose is to provide an organization through which the employees can bargain collectively and enter into agreements with respondent regarding hours of work, working conditions, rates of pay, and other matters of mutual interest. (Respondent Exhibit No. 1.) The Association had 762 members on about September 28, 1937 and 667 members on December 9, 1938. It is a labor organization within the meaning of the Act.

III. *The Unfair Labor Practices*

A. The Michiana Electrical Utility Workers Association

1. The History of Its Organization

5. In the spring of 1937 (probably in April), the Union began an active campaign to get members from among respondent's employees. Employees Lester Shields, Dewey Edwards, and Albert Otis were early and active members. During this campaign, the union held various organizational meetings, one of which was held during the last week in April 1937 in Falcon's Hall on Western Avenue in South Bend. During this meeting, respondent's General Line Foreman E. L. Livelsberger, and its Assistant General Line Foreman Glen Carlton (Respondent Exhibit No. 17) sat in Carlton's car across the street from the Hall, where they could see who entered and departed. They were seen by a number of the men who went into the meeting. Their presence outside caused some discussion in the meeting itself; crew foreman R. L. Hoblitzel left the meeting and joined the General Line Foreman and his Assistant in the car. Then Samuel Guy, the Union's business manager, left the meeting and went over to the car, where he spoke to the foreman and invited them in to the meeting to get first-hand information. Mr. Carlton declined, saying that he could get the information anyway in the morning.

6. Shortly thereafter, the Union's business manager, Mr. Guy, and his assistant, John R. Marks, called on the respondent's officials in South Bend. They talked with Mr. Thomas F. English, the Vice President and General Manager, and with Mr. Charles B. Calvert, the Assistant Secretary. Mr. Guy then told the company officials of his position in the Union; of its purpose and method of functioning. He announced the Union was going to try to organize the respondent's electrical employees, and left a sample of the type of contract the Union normally desired. Respondent's General Manager replied that he had nothing to say about this and that he thought his employees were well paid, satisfied, and without any need for a labor organization.

7. Russell T. Harter is a foreman of a transmission crew consisting of four employees who maintain a "hot" or transmission line. On or about Tuesday or Wednesday, May 11 or 12, 1937, Foreman Harter thought he noted by the expression on the faces of his men—Leonard Bast, Seth Vandenberg, and Vern Sowell—that "something had happened . . . Now, they wouldn't bring the question to me until I kind of got wind of it, because they weren't acting natural; they weren't talking between themselves, and—I don't know—they just kind of held back from me just like there was something on their mind, and I started questioning them and I just kept driving away, and pretty soon one of them slipped . . ."

8. "When we was conducting that conversation the first thing I started on them about was, I inquired if there wasn't something they had on their minds that wasn't just exactly as it should be . . . and they just finally—one of them—I am not sure which, but I believe it was Bast mentioned about being uptown to this particular meeting. And I knew, or I had heard in a roundabout way that they had had a meeting up here . . . And, of course, being inquisitive, I started putting questions to them of that character. . . . I asked them if they was to that meeting. They denied knowing even of any

meeting. Then I just kept drilling away on that same idea, that they had been to a meeting out at Falcon Hall, and I put up some stories to them that I had no idea there was any truth to at all. I just questioned them. I made believe I knew something that I didn't, because I wanted to get the story out of them, and they finally told me that they had been to that meeting. That is, Bast had told me he had been to the meeting."

9. "Now I didn't know that the men had been to that meeting absolutely at all, but I started questioning them about who was the speaker of the meeting, and everything of that kind, till I pinned them down to where they had to admit they was to the meeting. That is Bast did . . . . I asked how many was to the meeting and asked them the names of different ones that was there. They didn't give me no names at all, because it was none of my business."

10. "Well, just prior to this time one evening, Otis and Shield went out to Vern Sowell's house and called him to the door and asked him if he wouldn't come out to the car. Now, they wouldn't go into his house. They asked him if he wouldn't come to the car; that they had something to say to him. Mr. Shields done that, see, and Otis stayed in the car. Well, they got him out there and they started putting pressure on him about what he was going to do about joining this union, the International Brotherhood. Well, he was afraid to say anything to me. He kept it under his hat. I am not sure whether it was the same night, but about that same date they went to Bast's house and they done the same thing at his house; called him out at night."

11. "It come out bit by bit. They just volunteered about what happened that night, about them being invited to the meeting, and give me the names of the men and the night of the meeting, and things of that character." This discussion lasted "not over two or three days at the most."

12. On Friday, May 14, 1937 Foreman Harter and his

crew had lunch at Eagleston's restaurant in Niles, Michigan. There they fell in with a crew of men from the Michigan Bell Telephone Company. "This foreman was telling us the set-up that they had under their association, and he gives us details of it as it worked, all the way through, and they were perfectly satisfied. He had nothing but praise for their association."

13. "Well . . . after they left, the men and I were talking about the thing, and they kept putting pressure on why we couldn't form the same type of an association of our own." "I don't mind telling you I didn't sleep so well Friday night. It was on my mind."

14. The next morning, Saturday, May 15, 1937, Foreman Harter decided: "Well, here, I am going to at least contact these other foremen and get their opinion on the thing." He thereupon approached William LaVelle, line foreman on the service rig while he was at work. An appointment was made for the following morning, Sunday, May 16, 1937, at La Velle's house. That evening Foreman Harter called on Foreman Ernest Clark and explained to him the idea of forming an independent association. "He was all in favor of it." Foreman Harter also telephoned Foreman Clarence E. Daniels and told him of the meeting scheduled for the next morning. Harter suggested that others should also be invited to the Sunday meeting.

15. During approximately this same week, Jack Betly, a lineman who had attended meetings of both the A. F. of L. and C. I. O. unions and who had apparently had trouble with both groups, drew up a paper entitled "SAFE" which announced the formation of a club. (Board Exhibit No. 4.) It said: "We, the older men in the employ of this company believe that we have men among us that can intelligently arbitrate with the management and get things we ask for without resorting to radicalism and dictation of outsiders." Anyone interested in joining "to help us fight our side" was asked to sign the paper and return it. With the help of his daughter and a friend, Betly had copies of the paper duplicated. He then

"passed them around to some of the boys." On Saturday noon, May 15, 1937, Betly too saw Foreman La Velle and was invited to the meeting scheduled for the following day.

16. On Sunday morning, May 16, 1937 Foreman La Velle met at his house with the following men: Foreman Russell Harter, Foreman Ernest Clark, Foreman Clarence Daniels and Linemen Jack Betly and Leo Ringen. They said: "Every night they go home, there is one or two men to solicit there, either CIO or the A. F. of L." Foreman La Velle reminded them that previously they had had the "Club of the Live Wire" which was exclusively a social organization. "There was no discussion of any union ever brought up in that club. We didn't have to have it. They wasn't so hot and heavy after the boys at that time." But this time was considered different. One man said: "I can't pay big money to belong to any union." Foreman Harter told of the Telephone Company's independent association. There was some discussion of a desire to get a 5-cent raise in pay, and insurance, but more about the C.I.O. and A.F. of L. unions that were then organizing because, as Foreman La Velle explained: "The older employees of this company own their own homes. They have their families. We are established there. This Electric Company, the Indiana & Michigan, is home for many of the old employees. We never needed a union at the Indiana & Michigan as long as I have ever been there up to the last present years—the last 4 or 5 years—when the A. F. of L. and the C.I.O. got so strong and they was going to come in and take our little play house away from us; then we organized what we called the Michiana Electric Workers Association."

17. The men then decided to have some membership application cards printed and each contributed $1.00 for this expense. Foreman La Velle then called on J. Frank Miles who was a co-officer with La Velle in the Holy Name Society (1896) and also was respondent's District Distribution Engineer, with four engineers working under his supervision (Respondent Exhibit No. 17). The

work of Miles and his subordinates consists of making plans, drawings, estimates of material and cost for the construction, reconstruction and maintenance of distribution lines and street light circuits. His office is in the general office at the Colfax plant in South Bend; his subordinates are draughtsmen and engineers, who assist in the making of field notes, sketches and plans. He is a supervisory employee.

18. Foreman La Velle told District Engineer Miles he wanted some printing done that day if possible. Miles then took La Velle down to a Mr. Woods who had previously done printing for the church society. On the way down, La Velle told Miles they were forming an independent association and they wanted application cards printed. Foreman La Velle, District Engineer Miles and printer Woods then wrote the language which appeared on the card (Respondent Exhibit No. 4). One thousand cards were printed for $4.75 and five hundred were delivered on that Sunday afternoon.

19. Sunday afternoon, May 16, 1937, about 4:30 p. m., Foreman La Velle got the cards and distributed them to men who called at his house, i. e. Foreman Harter, Daniels and Clark and to linemen Betly and Ringen, and 15-20 others. Glen Carlton, the Assistant General Line Foreman, called for cards about 6:00 p. m. However, Carlton, Miles, Jack Hanley and others did not receive their cards until the next day, Monday. The men distributed the cards "over the property, most of them, on Sunday, near outside of Monday, the other five hundred."

20. La Velle testified these men desired to get their organization started right away "because the A. F. of L. and the C. I. O. had their men out soliciting employees, and from what I gathered from these men, they was working pretty fast. So then we discussed what we wanted to do, and we really went out and cleaned it up in four days and had around five hundred members, I think, in four days' time." The only reason for starting the Association at that time was to beat the A. F. of L.

and the C. I. O.; "we didn't want to pay that big dues; that is one reason."

21. On Tuesday, May 18, 1937, Jack Betly laid off work and drove up north where he showed his petition or paper and also the new membership cards to the men at Benton Harbor. Some of them signed. While on this trip, Betly saw one of respondent's tree trimming gangs seeking shelter in their truck from the rain. He stopped. The men were called to the rear of the truck. Betly explained the older men of the company were forming a club or association to keep out the C. I. O. and asked the men to sign. They did so. This was on company time.

22. Four employees, including Foreman C. E. Masten, are shown by the Association's records to have signed even before May 16 (Board Exhibit No. 12) although this seems difficult since the cards were not printed until then. Of the men who met with La Velle on Sunday, only two Leo Ringen and Ernest Clark) signed cards of that date (Board Exhibit No. 12). Five other employees (Austin, Brunson, Morehouse, Quick and Slott) also signed that Sunday, but the reason for their early participation does not appear. Foremen La Velle, Harter and Daniels all signed as of Monday, May 17 (Board Exhibit 12) although they testified they commenced circulating them on May 16. In fact, the Association records show that 85 employees signed on May 17; 197 signed on May 18; 108 signed on May 19; 191 signed on Thursday, May 20; 202 signed at various dates after May 20, 1937.

23. During the first part of the week in question, respondent's Assistant General Line Foreman, Glen Carlton, discussed the embryonic association with Frank M. Henderson, respondent's Transmission Engineer and Supervisor of Right of Way. Carlton suggested a meeting be held "between representatives of the various departments"; Henderson volunteered to furnish his house for the meeting place.

24. The meeting was held on Wednesday, May 19, 1937, and was attended by Henderson, Carlton, and Taylor

Edgell, Acting General Line Foreman for the Benton Harbor Division. Also in attendance were Mrs. Campbell, a stenographer; Nelson D. Lambert, a right-of-way man in Mr. Henderson's department; Ray M. Collins, condenser operator; and James Marsh, a Class A operator with minor supervision over one Class B operator. Marsh used to work directly under the supervision of Mr. J. J. Gerard, Superintendent of System Operation (Respondent Exhibit No. 32) when Marsh was a swing operator. Now Marsh works at the Elkhart hydro-plant under the supervision of the Hydro Supervisor, Mr. Barrett. Marsh receives a salary of $148.50 per month. Foreman Harter and District Engineer Miles did not attend the Henderson meeting; neither did Foreman La Velle.

25. At this meeting there was first general discussion of the advisability of forming an association. Collins "said that at the Twin Branch powerhouse that there quite a few members of the C. I. O. at that time, and they were more or less active in distributing literature and visiting the boys, and I thought that if it was necessary, which it seemed as though it was going to be, to have an organization, that it was our right and our privilege to form our own organization."

26. Mr. Collins further said that a week previously, in view of the C. I. O. activities, he had inquired of the Indiana Bell Telephone Company's general manager about that company's association; that the general manager had said "in his official capacity . . . . he had no right to talk about the Indiana Bell Association" and had referred Collins to attorney Ralph H. Jernegan of Mishawaka, Indiana (Respondent Exhibit No. 2); that he had seen Mr. Jernegan who had said an independent organization was possible under the law if it was not "dictated over by the management" and that he would be willing to help the employees if they wished it.

27. The employees at the Henderson meeting discussed the Wagner Act; they decided to ask Mr. Jernegan to become their attorney, and to have a public mass meeting

of employees on the following night, May 20, in the St. Joseph schoolhouse. This was subsequently arranged by District Engineer Miles and the notice was passed around in time for six to eight hundred to attend the meeting. Toward the end of the Henderson meeting, the men chose a name for the association and drafted a petition addressed to the management which recited that a majority of the employees had organized a union. "We expected to present it to the employees for their ratification." That night Marsh and Collins took the petition to Attorney Jernegan, who agreed to redraft it; to be present at the May 20 meeting, and to help generally in the organization of the Association.

28. The next evening, as Mr. Lambert was going to the St. Joseph schoolhouse meeting, he met his supervisor, Transmission Engineer Henderson (Respondent Exhibit No. 17) and Mr. Collins. They asked Mr. Lambert to preside over the meeting; he consented. Then, "very hurriedly Mr. Carlton and Mr. Henderson . . . and Mr. Jernegan" and Mr. Lambert "went over the plans of procedure that we would follow in conducting this meeting."

29. Mr. Lambert opened the meeting and read to the men "part of the New Wagner Labor Act." He then—to use his own words—"asked them or asked the company, rather the meeting, if they would be in favor of starting a company union . . . I can't remember the exact result. I know that it was a great number of the majority in favor of starting a company union."

30. Representatives from respondent's different branches were then called for and requested to take seats on the platform. Acting General Line Foreman Taylor Edgell responded for the Benton Harbor division. Ray Collins represented the Twin Branch division. He was selected, he presumed, "from washroom talk." Others acted on behalf of other divisions, although there were no formal elections to designate them. George S. Holmes, respondent's Safety Engineer, was elected chairman of the new organization, although he was not even present.

On District Engineer Miles' suggestion, the vote for him was made unanimous. (See minutes in Board Exhibit No. 5.)

31. Chairman Lambert, pursuant to plans made before the meeting, produced the petition for recognition addressed to the company; it was signed by the representatives. Transmission Engineer Henderson's motion that the petition be adopted by the assembly was passed. District Engineer Miles' suggestion that membership cards be collected from those attending the meeting was executed. Mr. Henderson's motion that the word "Utility" be added to the Association's name was adopted. Attorney Jernegan made some suggestions. (See Minutes in Board Exhibit No. 5.) A committee was appointed to prepare by-laws. The meeting was finally adjourned.

2. The Selection of By-Laws and Officers

32. On May 28 the Association's committee on by-laws met in attorney Jernegan's office. It added to a proposed preamble a recitation that the Association was being formed "free from managerial influence." Also "in order that we have proof that we have a bona fide organization that will stand inspection from any angle," it was decided that the Local Councils should meet at least once a month and that the Treasurer should maintain accurate records. (Board Exhibit No. 5; Respondent Exhibit No. 1.) On June 4, the by-laws committee met again. Regarding membership, "it was suggested that we lean away from rather than towards including department heads to be on the safe side. It was questioned were foremen eligible. It was thought that they would be, but it be best that they do not take too active part in the organization so as to make men working under them feel the union was run by higher-ups." It was also thought that the secretary should be "a qualified outsider, not employed by the company, thus strengthening the organization against outside investigation." (Board Exhibit No. 5.)

33. On June 11, 1937 the Association had its next general meeting and then adopted the by-laws (Board Exhibit No. 5; Respondent Exhibit No. 1). It was decided that new members joining after August 1, 1937 should be allowed to vote only after six months of membership, because: "This period of six months without vote would do away with radicals joining just before a subject is brought up, just to vote their way and not as a level-headed group, carefully studying each problem presented." (Board Exhibit No. 5.) The minutes of that meeting also record: "It was then asked if there is anything in our by-laws to keep other union members from signing up with this one. It was shown that in the preamble is such a statement, saying without affiliation with any other union."

34. On June 24, 1937 the Association's General Council elected Safety Engineer George S. Holmes as President; Acting General Line Foreman (Michigan Division) Taylor Edgell as Vice President; condensor operator Ray M. Collins as Treasurer; and Meter Superintendent R. E. Denman (Board Exhibit No. 12; Respondent Exhibit No. 17) as Secretary. The Council also began its discussion of working conditions and, apparently, of provisions that should go into a contract with respondent. This was the predominating subject at subsequent meetings of the Council. (Board Exhibit No. 5.)

3. Negotiations Between Respondent and the Association

35. On the morning of May 22, 1937, the Association committee consisting of Assistant General Line Foreman Glen Carlton, Transmission Engineer Frank M. Henderson, lighting salesman William Burke, and Class A Operator James Marsh met for the first time with respondent's management, Thomas F. English and Charles B. Calvert. The Association presented its petition, previously drawn up by attorney Jernegan, and a copy of the minutes of the mass meeting held on May 20, 1937 (Respondent Exhibit No. 18). Mr. Calvert asked what the men had in mind and what was back of it.

36. Mr. Marsh said he thought all of the men that had met at Engineer Henderson's house "had in mind of trying to follow the only commandment that Christ gave on earth, that was in common words, "Do unto others as you would that they should do unto you." Respondent's Assistant Secretary Calvert quickly responded by rising to his feet, hitting the table and saying: "Boys, if you put that one thing in, you needn't worry about having any contract signed. It will be signed immediately with that one thing in it." The management then stated further: "We can't do anything at all until you boys get organized. Tell us what you want, what you are going to do and let us know what it is all about."

37. Shortly thereafter the committee made a written report to the Association concerning the meeting with respondent, and announced: "The committee was assured of cooperation between the management and our organization. Since we have a total membership of 670 out of a total of approximately 900 eligible employees, the management is legally obligated to recognize our group as sole bargaining agency for all employees, which was unofficially done when the petition was presented. The Michiana Electrical Utility Workers Association will be given official recognition when a contract for collective bargaining is presented by the association and signed by the management." (Board Exhibit No. 5.)

38. On July 16, 1937 the Association's president, Mr. Holmes, took to respondent a copy of the contract (Respondent Exhibit No. 19) which the Association proposed. Mr. English was out of the city, so Mr. Holmes talked alone with Mr. Calvert who promised that it would receive consideration.

39. On August 3, 1937 the Association's officers (Holmes, Edgell, Collins, and Denman) met with respondent's officers. Mr. Calvert said the company had received a petition and proposed agreement from another union on May 24, 1937. He thereupon asked the officers: "Have you consulted with your attorney as to your stand-

ing under the Labor Act?" They said they had discussed it generally with Mr. Jernegan, their attorney. Mr. Calvert, who is himself a lawyer, replied:

> "To be frank with you, the question is this and a matter that I suggest you refer to Mr. Jernegan. How are you going to establish this condition in that you are the sole bargaining agent? What I have in my mind, have you discussed with him the necessity of an election?"

The Association committee—as Mr. Edgell put it—"withdrew the petition at that time and decided to wait until we knew whether we wanted a petition for recognition for all of the employees or for membership only. It was something we had not even thought of." Mr. Holmes said they would have to consult with their attorney. Mr. Calvert also asked for a copy of the Association by-laws. However, he appeared already to know of their contents; thus he said: "The by-laws, if they have not been changed, are set up that way." (Respondent Exhibit No. 20; Board Exhibit No. 5.)

40. On that same day, August 3, 1937, Mr. Holmes, for the Association, wrote the Indiana State Labor Relations Board asking it to conduct an election. (Board Exhibit No. 5.) Again on August 11, he wrote urging haste. The State Board replied it had no jurisdiction and suggested the National Board. Contact was established. On August 24, 1937 Mr. Holmes mailed to the Chicago Regional Office of the Board various Association documents. On September 20, 1937 Mr. Holmes telephoned and then wrote to the Chicago Regional Office asking for information about the status of the Association. On September 26, 1937, the Acting Regional Director of the Board replied that the case against the respondent was still under investigation and was confidential.

41. September 28, 1937 was apparently a busy day. For on that day, respondent's Meter Superintendent, R. E. Denman, in his capacity as secretary of the Association, signed an affidavit (Respondent Exhibit No.

22) "that as of September 27, 1937, not less than 750 of the employees of (the respondent) were and still are active dues-paying members of this Association, which number of employees this affiant is informed and believes constitutes more than a majority of the total employees." On that same day, Mr. Holmes and Mr. Denman transmitted the affidavit to respondent, together with a request that the company meet with them at 10:30 o'clock, October 1, 1937 "for the purpose of concluding a working agreement between the company and its employees." (Respondent Exhibit No. 21.)

42. Also on that same day, September 28, respondent sent the Association at "South Bend, Indiana" a letter saying that in view of the certification by Mr. Denman, the company recognized the Association "as the sole bargaining agent for all of the employees of the said company." (Respondent Exhibit 23.) Also on that same day, respondent sent the Association, at the same general address, a second letter stating that representatives of the company would meet the Association at the time and place on October 1, 1937 suggested by the Association's request.

43. On October 1, 1937 the Association's officers met with Messrs. Calvert and Thompson, representing respondent, and went over the proposed agreement, paragraph by paragraph. (Respondent Exhibit No. 24.) Mr. Calvert said most of it was already in effect, as company policy or practice. He promised to take it up with Mr. English on his return to the city. At the conclusion, Mr. Holmes remarked: "If negotiations are allowed to drag indeterminately, it will contribute to more dissatisfaction arising among the men" and Mr. Collins said: "It might be surprising to you to know that a lot of men (are) much more favorable to other organizations. If no action is received, it will be a flop." (Respondent Exhibit No. 24.)

44. Consequently, on October 18, 1937 respondent offered (Respondent Exhibit No. 25) a general increase in pay of 5c per hour. This offer was accepted by the Association on October 29, 1937. (Respondent Exhibit No. 26.)

45. Thereafter came more communications (Respondent Exhibits 27 and 28) and more conferences, during which a declaration of policy was issued by the company and finally on February 5, 1938 a contract, or working agreement, was entered into between respondent and the Association (last 8 pages of Board Exhibit No. 13). The raise in pay had become effective November 1, 1937. The contract of February 5 dealt largely with working conditions and grievances on principles already established. It also provided for arbitration and stated: "There shall be no strikes or picketing during the time this agreement is in force."

46. On March 1, 1938 Mr. English, on behalf of the respondent, submitted to the Association a proposed classification of employees (first 4 pages of Board Exhibit No. 13). On March 22, 1938, the Association replied and accepted the proposed classification (Respondent Exhibit No. 30.) On July 11, 1938 the Association requested a meeting with various departmental heads to straighten out various grievances. (Respondent Exhibit No. 13.) This conference was held as requested. (Respondent Exhibit No. 31.) The contract expired, by its own terms, on March 22, 1939.

4. Supervisory Character of the Association's Leaders

47. The Association originated in the mind of Crew Foreman Harter and was taken up by Crew Foreman La Velle, Ernest Clark, and Clarence E. Daniels, who were joined by linemen Jack Betly and Leo Ringen at the first meeting on Sunday morning, May 16, 1937. These foremen were helped that day by District Engineer Miles. Clearly they dominated the initial group not only in number but also in initiative and activity.

48. Regarding his position, crew foreman Harter testified: "I figure that your men look to the foreman as a leader. Now if a foreman isn't a leader, he isn't a foreman, that's all, because the men, they more or less respect your foreman." George F. Dequine, respondent's

Superintendent of Distribution and Transmission (Respondent Exhibit No. 17) testified that a crew foreman is always a promoted lineman with pay accordingly raised from $1.00 to $1.15 per hour. "The foreman has complete authority over the crew from the time—or during working hours . . . (He can) give any order that has to do with the operation of that crew." "He has to be able to handle men. . . . And that's a qualification that is probably one of the hardest to fill. He has to be able to maintain peace within the crews, because you cannot accomplish sufficient work if you have unrest in the crew, or if you have one man against the other, . . . He has to be able to promote harmony. He has to be thoroughly sold on safety work. He must understand at the time that he is on the crew, during working hours, he is handling the company's cash register, and he must handle that efficiently . . . He is spending the company's . . . time and material . . . He is your key man. He is the success or failure of your organization . . . He is a key man in that he takes a crew of men out and he is spending, you might say, the company's money, and he has to be capable of spending that in order to get the most for the amount that he spends." Crew foremen are supervisory employees.

49. By the following Wednesday, May 19, 1937, the Harter-La Velle-Clark-Daniels-Betly group was displaced by new leadership which consisted of Glen Carlton, Frank Henderson and Taylor Edgell. They held the Wednesday night meeting at Henderson's house, planned the mass meeting for Thursday night, May 20, 1937, and conducted the opening negotiations with the respondent on May 22, 1937. These men had even greater supervisory powers than the foremen—in fact, they supervised the foremen.

50. For example, Frank Henderson has working under his supervision three engineers, five right-of-way men, and one stenographer. (Respondent Exhibit No. 17.) He is directly responsible to the Superintendent of Distribution. His salary is $243.50 per month. Mr. Henderson and his division of engineers make, upon the superin-

tendent's request, the plans, specifications and estimates for the construction of the transmission and distribution lines. This includes an inspection of the ground, laying-out the line, the specifications of poles and other materials to be used, an estimate of the material cost, the time required, and the labor cost. Mr. Henderson himself determines whether small repair jobs shall be done but decisions on construction jobs are made by the Superintendent. If the decision is affirmative, Mr. Henderson then swings his right-of-way unit into action. A map is prepared showing the property owners and the location of the line. "The easements are then prepared and given to the right-of-way men for securing the signatures." Mr. Henderson assigns his men to the various ownerships. One dollar is paid for these easements; no consideration is agreed to by the company. Mr. Henderson then "checks over the easements to see that all of the ground is covered on which we plan to build the line" and makes his report. When construction starts, Mr. Henderson will sometimes have a survey crew on hand to lay out the line on the ground: "Usually one the head of the party and one for chain man and rod man." He also has "the field supervision of the work as it progresses . . . to determine that the lines are built according to the plans and specifications." When there is a variance, "I talk to the man in charge of the construction crew and see that it is corrected . . . (either) to the foreman of the crew . . . (or) I would very likely talk to the general foreman in charge of the work." "The specifications determine the way the work should be done." It thus appears that Mr. Henderson has direct supervision of over nine employees; that he determines where and how transmission and distribution lines shall be constructed; is responsible for getting legal authority from landowners and for seeing that the line is built properly. He is clearly a supervisory employee.

51. Glen Carlton—who suggested the meeting held at Henderson's house—was and is respondent's Assistant General Line Foreman. His immediate superior is Earl

F. Livelsberger, the General Line Foreman, whose division performs four classes of work, i. e., transmission, distribution, underground, and forestry (Respondent Exhibit No. 17). Superintendent Dequine testified: "Mr. Carlton has had a great deal of experience in transmission work and he is really the man in charge of transmission." There are four transmission crews, consisting of four foremen, 13 linemen, three truck drivers, two groundsmen, and two carpenters (Respondent Exhibit No. 17). There are also "5 or 6 crews of distribution and Mr. Livelsberger handles those pretty nearly directly, although Mr. Carlton does assist him . . . (Their work) is similar to an extent but Mr. Livelsberger's duties carry him over a wider territory than Mr. Carlton's do."

52. General Foreman Livelsberger testified: "Mr. Carlton helps distribute the work that comes to us from the engineering forces. Usually he is distributing work to the transmission crews, that is, takes care of them in general. I don't usually take an active part in that . . . and then he helps out at times when I am on vacation, times it is impossible for me to be there for some other reason, he might distribute the work to some of the crews . . . other than the transmission, some of the distribution crews, and he also helps out occasionally if he happens to be going in the direction of some of our distribution crews . . . Often times I will ask him to stop and see how so-and-so is getting along and see whether there is anything that he might want and, if he needed anything, he would probably stop and help him out to the best of his ability." When Livelsberger is absent, Carlton takes his place "in a general way," i. e., "he might be helped out by various ones around there." Carlton himself testified: "I am sort of a supervisor under Mr. Livelsberger. He has the whole say-so . . . and I also practically have charge of the maintenance of the transmission department, under his jurisdiction." Carlton also exercises some control over the foremen in the distribution and other lines of activity. In fact, Carlton testified he had over them practically the same

control as he had over the foremen in transmission. Glen Carlton thus appears, unquestionably, to be a supervisory employee.

53. Also at the May 19 meeting held in Henderson's house, was Taylor Edgell. Mr. Edgell used to be a line foreman supervising crews ranging from 4 to 24 men, in size. However, for "approximately a year and a half" Mr. Edgell has been Acting General Line Foreman in the Michigan Division.[2] This promotion took place in the spring of 1937. His duties are now different in that "before I was directly in charge of a crew of men, that is, as a crew foreman or line foreman. (As McKinder's) assistant, I contact the different crews . . . I take the foremen out and show them jobs ahead of time, before they went on to them with their crews, and also . . . contact them from time to time to see that the work is progressing right." His immediate superior is Mr. Rohl who is Superintendent of the Benton Harbor, or Michigan Division. Mr. Rohl may perform some of the duties of the divisional general line foreman. In such work he is assisted by Edgell. Edgell had this position on May 19, 1937, when the first meeting of the Association took place. It is clear that Taylor Edgell is and, since sometime before the formation of the Association, has been a supervisory employee.

54. As a result of the May 20 election, George S. Holmes appeared as a new leader. Elected temporary chairman during his absence, he became an active officer on his return. He assisted in drawing the by-laws and

[2] There is some confusion about Edgell's present title. Although he is carried on the books as a line foreman, that has not been his position since the spring of 1937. During this period, Edgell characterized himself as assistant to Mr. McKinder, the General Line Foreman. However, McKinder has not been acting in that capacity but instead has been the superintendent. Edgell testified his immediate superior during this period has not been McKinder but instead was, and is, Mr. Rohl. However, Rohl is not the General Line Foreman, but instead is the Superintendent (apparently not the superintendent now being replaced by McKinder). It thus appears that Edgell's immediate superior is a superintendent; that Edgell's work is that of the general line foreman; and that his present title should be Acting General Line Foreman for the Michigan Division.

presided over the May 28, 1937 committee meeting. On June 24 he was elected President of the General Council and became the Association's leading executive. George S. Holmes was and is Safety Engineer for the respondent. He works only in the distribution and transmission department and is directly responsible to the departmental superintendent, G. F. Dequine. (Respondent Exhibit No. 17.) This makes him fourth in line of authority from the general manager of the company. (Respondent Exhibit No. 32.) His position ranks even with that of a General Line Foreman, Service Superintendent, Chief Inspector, etc. (Respondent Exhibit No. 17.) Mr. Holmes receives a monthly salary of $208.50. This is substantially above that of a crew foreman who then got $1.10 per hour for a 40-hour week.

55. Mr. Holmes testified: "I conduct meetings amongst the line crews, monthly in groups, and meetings of that kind. I attend meetings over the districts too, in the line department, safety meetings . . . Here in South Bend, I will hold an average of 5 or 6 a month, 15 to 20 men in a group. I conduct the meetings in South Bend, but I don't conduct those in the districts. I merely sit in." "I visit the different crews from the safety standpoint and try to get them to prevent accidents." Mr. Holmes works as an observer, or an inspector. If he sees workmen violating a safety rule, he "would invariably call it to their foreman's attention." If the foreman did nothing about it, he "would probably call it to the attention of the general foreman." Respondent sent Mr. Holmes to the Silver Jubilee National Safety Congress, held in Chicago, Illinois from October 10 to 14, 1938, and paid his expenses. Although Mr. Holmes does not directly supervise workmen, his authority, responsibilities and duties clearly identify him with the management. He is a supervisory employee.

56. In addition to these officials who became organizers and prominent leaders in the Association, there were many other foremen and employees with supervisory duties.

The record indicates that they too became at least members in the Association. For example, respondent's personnel chart (Respondent Exhibit No. 17) indicates the employees in the Distribution and Transmission Department. Counting all superintendents and the general line foremen, there are 44 supervisors so shown. Of these 44 supervisory officials, 32 joined the Association (Board Exhibit No. 12). If one excludes the superintendents and the general line foremen, then of the 32 supervisors remaining, 29 became Association members. By such general membership, the supervisors gave support to the organization.

5. Activity of Supervisors Joining the Association

57. The seven men who met on May 19, 1937 in Mr. Henderson's house decided to have a mass meeting the next evening and had District Engineer Miles arrange for the use of the St. Joseph schoolhouse. By passing the word around on May 20, they got 600 to 800 employees to attend that night. Foreman La Velle said "the word was passed on Wednesday night and Thursday about this hall being open Thursday night at eight o'clock." Such effective solicitation of attendance was made possible by the foremen. Thus, at noon on May 20, Foreman Claude Hildebrand, came out of his office and announced there was "a special meeting, or a big meeting, at the St. Joe school and they wanted everyone to attend." Likewise, Foreman Masten asked employee Otis to attend the May 20 meeting, and he did so.

58. During this time Assistant General Line Foreman Glen Carlton was especially active in promoting the Association. On May 17, 1937, he called on employee James Marsh at his house to talk with him "about a union or something." Marsh said, "I don't want to have anything to do with a company union for the simple reason the foremen would be at the meetings and the boys would all be scared to death if they have any grievances to mention it." The Assistant General Line Foreman replied that he didn't think the company knew anything about it

and said: "We would like for you to go along and be a representative from the operating department." After thinking it over for a few hours, Marsh accepted the offer and got some Association membership cards from Carlton. The next day and evening Marsh solicited memberships. Tuesday night Carlton called for a report as to results and also invited Marsh to the Wednesday night meeting at Henderson's house.

59. Mr. Carlton likewise got lineman Charles A. Havlin to join the Association and asked him to see linemen Lester Shields and Al Otis. "He said they were two pretty hard nuts to crack and for me to work on them for him." Havlin did call on Shields at his house, but he wouldn't sign. Havlin approached Otis twice; finally got him to sign, but in pencil. This application Havlin delivered to Carlton but "Mr. Carlton gave it back to me and his fountain pen at noon and asked me if I would not go out and get Al Otis to sign it in ink for him." Havlin did so, but Otis put it off and never did return the signed application.

60. However, after Shields had refused to sign for Havlin, he did sign for Carlton. On May 20, he was going off duty and asked Carlton about the meeting announced for that evening. Carlton said Shields would have to sign up to find out about the meeting and showed him an application card. But Shields refused to sign and went to see Mr. Livelsberger, the General Line Foreman, about it. "He told me he couldn't tell me anything about it, that I would have to see Mr. Carlton or somebody else." Shields then went back outside the plant to Mr. Carlton and signed the application.

61. The Assistant General Line Foreman also left application cards at the Riverside Sub-Station so that each of the men there could sign. On the evening of May 19, Mr. Carlton also stopped at Earl Freeman's house, showed him an announcement (Board Exhibit No. 4) and left an application card. He asked Freeman to join. Freeman did sign the card and delivered it the next morning to his

foreman, J. Miller. He also paid his dues to his foreman. Mr. Carlton likewise went to see R. L. Hoblitzel, one of the foremen immediately under his supervision, and solicited him. "He told me that there would be no question about the company recognizing the union; that it was the older fellows; wanted me to take cards and solicit the men that worked with me, and I refused." Mr. Carlton testified he had been very keen to push the Association along and help make it go, and that he gave out and collected application cards. "I was all over the system and lots of people would come up and give me cards . . . Probably I collected maybe 75 or 80, some place in there."

62. Other foremen were also active in keeping the Association alive. Thus, after it had organized, Crew Foreman J. Miller and Clarence Daniels approached lineman Shields about his delinquent dues. "They asked me to pay up my dues and get behind them and help push it along." He refused. Similarly, Foreman Donovan D. Strock held a conference with his crew, on the job, during which he explained the Association and "said that he thought it would be a good thing for all of us fellows to join, rather than to join an outside union." This was apparently on May 20, 1937. All the men on Strock's truck agreed with him; all went to the meeting that night; all sat together. Foreman Strock got some Association application cards; the men in his crew signed; returned the cards to Strock and paid him their Association dues. Later Foreman Strock presided over district meetings of the Association; now Bruce Blair, son of the Butler Division Superintendent, presides.[3]

63. E. J. Ernst was made Association dues collector for the group of tree trimmers working under Foreman Lilliard and Solicitor Kidder. He collected for a time and then the men stopped paying. In December and again in January 1938 Foreman Lilliard came out to the crew and

[3] Foreman Strock testified: "I believe I asked all the different fellows if they cared to join the Association. That is, outside of that I didn't do anything." From the demeanor of these witnesses on the stand, the Trial Examiner believes Hulwick was telling the truth and Strock was hedging.

inquired of Ernst about the dues delinquency and the reasons therefor. Foreman Lilliard told Durfey he was the only delinquent and it would look better if he paid up. Durfey paid 50 cents out of the 75 cents owing; Lilliard said: "Come on, pay up. If you can't spare the money, I will lend it to you." So Durfey paid. Employee Seeley also paid his dues directly to Foreman Lilliard. The tree trimmers were dissatisfied because of a reduction in hours that cost them 22 cents per day, and also because they had to pay their own travelling expenses. So, at Lilliard's request, Solicitor Kidder called a meeting of the tree trimmers. Foreman Lilliard, Acting General Line Foreman Edgell, and Safety Engineer Holmes—all on behalf of the Association—then attempted to sooth the grievance.

64. Lineman Frank Claeys was solicited for membership in the Association by Foreman Harter; was told to attend the May 20 meeting by Foreman Hildebrand and was prevailed upon by Foreman J. Miller to become a dues collector. Likewise, lineman Havlin was solicited for Association membership by Foreman Clarence Daniels, and for dues by Foreman Henry Thornton. Foreman Harter testified that the dues were collected from the men in his crew by Foreman Daniels and lineman Ringen.

65. It thus appears that respondent's foremen did not become mere inactive members in the Association. Their role was not that of the silent partner. They have been the force that maintained membership, collected dues, and kept the Association alive. Like sergeants, they have kept the rank-and-file in line.

6. Power of Supervisors Joining the Association

66. As indicated above, Foreman R. J. Miller was a very active union member. On his crew was Earl Freeman—a very active union member. They had a light truck, apparently running service, which involved considerable overtime and extra pay of $10 to $50 per month. On this truck, Freeman had always preferred to do the

electrical work at the house, which left the work on the pole for the other lineman, Ernie Hawks, who "didn't care whether he worked on the pole or on the house." One job was as easy as the other.

67. One day, about October 4, 1937, Foreman Miller asked Freeman to do some pole work. Freeman got his tools, "never said a word," and went up the pole. As he started off to climb up, he commenced to mumble something. When Miller asked what was the matter, Freeman "says he had always worked the house on such jobs as that." There was no further conversation about it. Freeman did that work and all other work Miller requested. Miller testified: "I don't believe he had to say very much, and I don't think he said anything, but his attitude was . . . ."

68. Without any warning to Freeman about seeking his transfer to another crew, or about taking the matter up with superiors, Foreman Miller consulted Assistant General Foreman Carlton. Carlton told Foreman Miller to talk it over with Freeman, but this Miller did not do. Instead he reported to Carlton that Freeman "got kind of grouchy on the job . . . and he would rather see him transferred to some other truck. Then Assistant General Foreman Carlton referred Foreman Miller to General Foreman Livelsberger who then "checked it" with Miller. Foreman Miller testified: "(Livelsberger) didn't give me much satisfaction. We talked it over there and there wasn't nothing against Earl Freeman, wasn't anything against him." They talked about changing him "for the betterment of each party." Mr. Livelsberger had had no complaints from the other lineman, Ernie Hawks, nor from anyone but Miller. Nevertheless, he made the change, without checking the report with Freeman; in fact, "I never did talk with Freeman, other than I believe. I told him that I would put him over on Masten's rig, a little different type of work."

69. Thus, Freeman was transferred to another job with a loss in pay of $10 to $50 per month, merely be-

cause his foreman said he didn't like his attitude—because "the corners of his mouth dropped . . . or his head went up." Nobody else had any complaints. Freeman did all the work as requested; he did not even "talk back." He was never consulted for his version of the situation. Without warning, he was transferred. It seems clear that the real reason for his transfer was his activity on behalf of the union in contrast to the activity of his foreman (Miller) and his foreman's foreman (Carlton) on behalf of the Association. The incident illustrates the power supervisors can exercise—and in this case, did exercise—when they become active in one labor organization and opposed to its rival organization.

70. At another time, Earl Freeman was talking during one noon, to Seth Vandenburg—probably asking him to come to a union meeting. Assistant General Foreman Carlton came up and said to Vandenburg: "If you don't go on, he is liable to convert you into an A. F. of L. man." Freeman got angry, replied "Well, I will say whatever I please around here," and walked away. Then Carlton got angry and announced he was going to punch Freeman in the nose. This interference by the Assistant General Foreman in a legitimate lunch-hour conversation resulted from his hostility to the union and his support of the Association. It too illustrates how the employer's support can be and was given to one labor organization through the active support of its supervisors.

71. Dewey Edwards testified he had been discriminated against because he supported the union and refused to support (although he did join) the Association. This was because he received "quite a lot of overtime, trouble calls at night" before the Association started, but since then had received only one call. Also, beginning in the fall of 1937, Edwards "was constantly shifted from one crew to another." While working under foreman E. J. Miller, he "was constantly doing work that was very dangerous for one man to do alone . . . a job that is always considered a two-man job." There were a good many of those jobs. The "point of one man working

primaries alone has been brought up a number of times" in the safety meetings conducted by Mr. Holmes.

72. Departmental Superintendent Dequine testified: The determination of what is a two-man job and what is a one-man job is—it is very hard to draw a dividing line between the two." It has come up for discussion in the safety groups. "No one can determine that but the foreman in charge of the work." The evidence is not sufficient to show any discrimination against Edwards because of union activities; it does indicate a situation that merited investigation. Edwards did not take it up with the Association as a grievance because he was opposed to the Association. He could not take it up with his foreman because his foreman was active in the Association and was—he thought—acting under orders to discriminate against union men. He could not effectively bring the subject up even at safety meetings because they were controlled by Association President George S. Holmes. The situation again illustrates the power in the foremen's hands to favor one union and discriminate against another with the authority given them by respondent.

73. A similar incident occurred among the tree trimmers gang working at Three Oaks under supervision of Solicitor Peach. One morning, promptly at 8:00 o'clock by Peach's watch, he ordered the truck, with its load of workmen, to start off. Employee Durfey testified "they started before the eight o'clock whistle, the factory whistle, blew." The wife of employee Clarence Garner was ill; he lingered at home, and when he reported for work the truck had gone. The truck went, on its normal route, past Garner's house, but did not stop for him.

74. During the ride to work, Durfey asked Peach why he did not stop. Peach replied: "Who is running this gang, you or I?" Other men on the truck added their disapproval and strong words were undoubtedly used. Peach got off the truck at the next town and telephoned his superior, Foreman Lilliard, about it. Lilliard talked

with both Peach and Durfey on the job; then the men were all called in to see Mr. Dequine, the departmental superintendent. Superintendent Dequine testified "After I had heard that story I criticized Peach for that. I told him that it seemed to me he was leaning over a little bit backwards. . . . to enforce a rule, unless it had been an occurrence that was happening quite frequently, and as far as I could gather it had not been." Both Garner and Durfey were members of the Union.[4] Solicitor Peach had joined the Association on May 19, 1937. (Board Exhibit No. 12.) He was, in effect, a foreman supervising the tree trimmers, although he got less pay. Mr. Dequine understood there had been a lot of controversy among those men about the unions and thought that "it probably was the basis of some of this ill feeling." Although the evidence does not show discrimination based on union activity, nevertheless it does show how foremen supervising the work of others may use that authority to support their own union and discourage their rival union.

75. A foreman's power over workmen under him is again shown by the incident of Foreman D. O. Howe whose lineman, Charles A. Havlin, was badly injured on about August 18, 1938. Havlin testified he was working on a pole where a high voltage primary wire stopped; that he asked for a rubber blanket for protection; that Foreman Howe refused it; that he (Havlin) refused to do any more work that day because it was unsafe; that he talked to Acting Superintendent McKinder the next day about it and he advised another unsafe method of procedure; that he finally felt he either had to do the work as directed, without protection, or quit; that he accordingly attempted the job and received the injury, which was, in fact, quite serious. Before this time, Havlin had had an argument with Acting General Foreman Carlton about the union, as a result of which Havlin had quit Carlton's Association and had openly joined the

[4] Durfey had joined the Association and signed its original petition to the management. (Board Exhibit No. 5). However, he later left the Association and became active in the union. This incident was subsequent, i. e., December 1937.

union. Fear that the hostile Association (with Carlton, Howe, and McKinder's assistant Edgell as active members) would oppose him, apparently prevented Havlin from taking his disagreement with his foreman up as a grievance, and caused him, instead, to take a chance.

7. Conclusion

76. In summary, it seems clear that the Association was started by four crew foremen and one or two linemen.[5] Under their promotion, it was born and grew for about 3 days—May 16, 17, 18, 1937. By Wednesday, May 19, 1937, Messrs. Carlton, Edgell, and Henderson took over the leadership—with the help of Collins and Marsh. They managed the organizational mass meeting of May 20 and the first contact with the management on May 22, 1937—when "the committee was assured of cooperation" and exclusive recognition was "unofficially" obtained. Carlton and Edgell supervise foremen who in turn supervise workmen. Henderson supervises some employees; has responsibility over the work of others; is close to the management. All three men are clearly supervisory. By May 28, 1937, at the latest, George S. Holmes actively took up his duties as temporary chairman and later president of the Association. Although he does not have direct supervisory powers, he conducts meetings for the respondent and represents the respondent on safety matters. He speaks for the management and is a supervisory employee.

77. Respondent's brief admits that "certain foremen took part in its organization" but argues that they were not acting for the respondent; that they did not have the right to hire and fire employees; and they constituted but a small part of the majority of the employees who joined. It is true they could not hire nor fire. Superintendent Dequine testified Thomas F. English, respondent's General Manager and the ranking active executive, was the only man in the entire company with that authority. However,

[5] Betley's participation is clear; Ringen's appears limited and rather inactive except for Sunday morning, May 16, 1937.

he obviously was not respondent's only supervisory employee. The foremen were supervisors also. And practically every one of them joined the Association at the very outset.

78. Of course, a few crew foremen also joined the union and all were eligible. Mere membership does not mean company domination. But the foremen who joined the Association did not stop on attaining membership; they actively urged workmen to attend Association meetings; they solicited Association memberships; they collected Association dues; they attempted to quell disruptions and to keep the Association strong. It was impossible for them to carry on these activities without using their authorities as foremen to support their arguments. One foreman (Miller) did it directly, by transferring a lineman, who would not agree, to a less advantageous crew. Others did it indirectly and, perhaps, unintentionally. But foremen have the power to make or break the men under them:—by the orders they give in supervising the work; by the speed, caution, or working conditions they require on the job; by the complaints or recommendations they give their superiors without the workers' knowledge; by the reports they turn in constantly to the management. When these men become active in sponsoring an organization, their activity is supported by the authority of the employer itself.

79. Respondent advised its departmental heads and superintendents concerning the Act and instructed them not to interfere in any way with unions. (Respondent Exhibit No. 11). However, it did not so instruct its foremen, and apparently assumed union activity by them was proper. The Association and its members were advised by counsel that participation by foremen was proper. This was apparently because the union (and other labor organizations) admit foremen to membership. However, the Board has held:

> "We are of the opinion . . . that the respondent is not relieved from responsibility for the union activity

of its supervisory employees by virtue of membership of such employees in a labor organization. A corporate employer in its relations to its ordinary employees necessarily acts through and must be held responsible for the acts of its supervisory employees. Where such employees actively interfere with one labor organization and promote another, the employer itself must be deemed to have engaged in such interference and promotion.[6]

80. It is therefore found that the respondent, by its officers and agents, on and after May 11, 1937, formed and sponsored the Michiana Electrical Utility Workers Association as a labor organization of its employees.

81. The respondent is dominating and interfering with the administration of a labor organization of its employees by the activities hereinbefore set forth, and is contributing financial and other support to said labor organization.

82. By dominating and interfering with the formation and administration of a labor organization known as the Michiana Electrical Utility Workers Association and by contributing financial and other support to it, the respondent has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

B. Interference, Restraint and Coercion

83. It has been found above, in paragraph 5, that sometime in April 1937 respondent's General Line Foreman E. L. Livelsberger and his Assistant General Line

[6] *Ward Baking Company* and *Committee for Industrial Organization*, 8 N. L. R. B. 558 at 565; *Tennessee Copper Company* and *A. F. of L. Federal Union No. 21164*, 8 N. L. R. B. 575 at 578; *Consumers Power Company, a corp.* and *Local No. 740, United Electrical, Radio & Machine Workers of America*, 9 N. L. R. B. 701 at 736; *Consumers Power Company* and *International Brotherhood of Electrical Workers, Local No. 876*, 9 N. L. R. B. 742 at 745; *The Serrick Corporation* and *International Union, United Automobile Workers of America, Local No. 459*, 8 N. L. R. B. 621 at 635.

Foreman Carlton sat in a car parked across the street from a union meeting and watched those who entered and left said meeting. It has also been found above, in paragraphs 7 through 11, that from about May 11 to May 14, 1937 respondent's Foreman Harter questioned his employees closely and persistently about their activities in the union and approaches made to them for membership in the union. It has also been found above, in paragraphs 66 through 69, that respondent's Foreman E. J. Miller through respondent's Assistant General Line Foreman and General Line Foreman, did, shortly after October 4, 1937, transfer Earl Freeman from Foreman Miller's crew to Foreman Masten's crew because said Freeman opposed the Association and was active in the union. It was likewise found above, in paragraph 70, that respondent's Assistant General Line Foreman interrupted a noontime conversation, in which Earl Freeman was talking about the union, by making a certain hostile remark and threatening to punch Freeman's nose. By each of the activities hereinabove mentioned, and as more fully set forth in the above findings, the respondent has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

84. Evidence was introduced at the hearing tending to show certain acts of discrimination by the respondent against William Payette, Earl Hootin, and Arthur W. Brown in connection with the severance of their employment with the respondent. They were at that time active members of the United Electrical, Radio and Machine Workers of America, a labor organization affiliated with the C. I. O. The pleadings do not squarely present these issues for decision. However, even if they did, the evidence in this regard does not show that respondent discriminated against these men because of their activities or membership in a labor organization.

C. The Discriminatory Discharge of Elkins

85. Forrest Elkins was employed and started to work for respondent on about May 13, 1937. He was hired for

temporary duty, i.e. for 3 months. He was classified as a laborer and paid the laborer's wage of 50 cents per hour. He worked at the Riverside Sub-Station. His duties were to water and mow the lawn; help dig a ditch; help the crew to install batteries, test bushings, take oil samples, etc. However, his work was unskilled; all the others in the crew were older employees, were skilled, and received 85 cents or more per hour.

86. Elkins also helped construct the Coloma Sub-Station (Respondent Exhibit No. 10). Likewise, he worked in the Main Street Sub-Station in Bar Harbor, where rotary condensers were placed on skids for removal from the Sub-Station. At these places, Elkin's work was manual in character, and was apparently designed to take care of the miscellaneous work required in the maintenance of properties.

87. About December 28, 1937, pursuant to instructions from Superintendent Sill, Foreman McClure told Elkins he was to be laid off the following Friday for lack of work. McClure also said: "You know, Mr. Elkins, when we hired you, we hired you temporarily and told you it would be from six weeks to three months and we have given you an extension and worked you up until now but the company has constructed all of their sub-station work and you are the youngest man and a laborer and, of course, you will have to expect to be the one to lay off." Elkins did not object at that time. The evidence does not show that his services were longer needed, nor that anyone was put in his place. Subsequently Elkins received employment at the Northern Indiana Power Company, where he is now employed. In all of his subsequent employments he received more money than he would have received from the respondent.

88. Elkins did not join the union until either December 13 or December 18, 1937. Although he testified he solicited a few memberships in the union, it does not appear that he was particularly active in its affairs, nor that respondent know of even his membership. He was

not a union officer. The evidence shows that Forrest Elkins' termination was caused by the expiration of the temporary need for his services and was not caused by his membership or his activity in the union.

V. *Interstate Commerce*

89. The respondent owns and operates electric generating stations in both Indiana and Michigan. It supplies electric service to industrial, city, and rural consumers in both States. It likewise purchases and sells some electrical merchandise, practically all of which is shipped from either Mansfield, Ohio or Chicago, Illinois, to its offices at South Bend, Indiana. It purchases some coal, 3 per cent of which comes from outside of Indiana. Respondent also purchases and exchanges electrical energy with The Ohio Power Company. During the calendar year of 1937 respondent obtained 396,156,712 kilowatt-hours of electrical energy from Ohio and transferred to Ohio 8,000,000 kilowatt-hours. During the same period, it transferred from Indiana to Michigan 68,279,000 kilowatt-hours and also transferred from Michigan to Indiana 12,729,020 kilowatt-hours of electrical energy. (Board Exhibit No. 2).

90. It is therefore found that the activities of the respondent, set forth in Section III above, occurring in connection with the operations of respondent described in Sections I and IV herein, have a close, intimate and substantial relation to trade, traffic and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce with the meaning of the Act.

Conclusions and Recommendations

Upon the basis of the foregoing findings of fact, the undersigned hereby determines and concludes that:

1. Respondent, by dominating and interfering with the formation and administration of a labor organization known as the Michiana Electrical Utility Workers Asso-

ciation and by contributing financial and other support to it and by watching those who entered and left a union meeting in April 1937, by questioning employees about their union activities from about May 11 to May 14, 1937, by transferring lineman Earl Freeman from one crew to a less advantageous crew, by interrupting and making hostile comments and threats during a certain conversation between employees Freeman and Vandenburg, and by interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, as set forth in the above findings of fact, has engaged in and is engaging in unfair labor practices affecting commerce within the meaning of Section 8 (1) and Section 2 (6) and (7) of the Act.

2. Respondent, by dominating and interfering with the formation and administration of a labor organization known as the Michiana Electrical Utility Workers Association and by contributing financial and other support to it, as set forth in the above findings of fact, has engaged in and is engaging in an unfair labor practice affecting commerce within the meaning of Section 8 (2) and Section 2 (6) and (7) of the Act.

3. Respondent, by discharging and refusing to employ Forrest Elkins, as set forth in the above findings of fact, has not engaged in an unfair labor practice within the meaning of the Act.

WHEREFORE, the undersigned recommends that:

1. The complaint be dismissed in so far as it pertains to Forrest Elkins.

2. Respondent cease and desist from interfering with, restraining, and coercing its employees in the exercise of their right to self-organization, to form, join, or assist the International Brotherhood of Electrical Workers, Local B-9, or any other labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection.

3. Respondent cease and desist from dominating or interfering with the formation or administration of the Michiana Electrical Utility Workers Association, or any other labor organization, and from contributing financial or other support to said Association, or any other labor organization.

4. In order to effectuate the policies of the Act, respondent take the following affirmative action:

(a) Offer to Earl Freeman immediate and full reinstatement to his former position as lineman on E. J. Miller's crew, or the equivalent thereof, without prejudice to his seniority and other rights and privileges;[7]

(b) Make whole the said Earl Freeman for any losses of pay, or losses of remuneration for overtime work, that he may have suffered by reason of the respondent's descriminating, interfering with, restraining and coercing him in the exercise of his rights guaranteed in Section 7 of the Act, by the payment to him of a sum of money equal to that which he would have earned as wages, salary, or compensation for over-time work during the period from the date of his transfer and discrimination to the date of the offer of reinstatement, less any amount he may have earned during such period as wages, salary or compensation for over-time work during such period.[8]

(c) Withdraw all recognition from the Michiana Electrical Utility Workers Association as representative of its employees for the purpose of dealing with the respondent concerning grievances, labor disputes,

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[7] The complaint did not allege and no finding has been made that respondent transferred Earl Freeman in violation of Section 8 (3) of the Act. However, it is clear from Section 10 (c) of the Act that in order to reinstate an employee with back pay, it is not essential that the Board conclude an employer has violated Section 8 (3). These recommendations are based on the conclusion that Section 8 (1) of the Act has been violated. See *Atlanta Woolen Mills* and *Local No. 2307, United Textile Workers of America*, 1 N. L. R. B. 316 at 332-333. Cf. *Shellabarger Grain Products Co.* and *Flour & Cereal Workers Union No. 20765*, 8 N. L. R. B. 336 at 337.

[8] See footnote 7.

wages, rates of pay, hours of employment, and other conditions of employment, and completely disestablish the Michiana Electrical Utility Workers Association as such representative;

(d) Serve written notice upon the Michiana Electrical Utility Workers Association that recognition is withdrawn and that it is disestablished as above provided.

(e) Post immediately in conspicuous places in all its plants and all its offices, and maintain for a period of at least sixty (60) consecutive days, notices to its employees, stating: (1) that respondent will cease and desist in the manner aforesaid; (2) that respondent has withdrawn all recognition from the Michiana Electrical Utility Workers Association as the representative of respondent's employees for the purpose of dealing with the respondent concerning grievances, labor disputes, wages, rates of pay, hours of employment, or other conditions of employment, and that said Association is completely disestablished as such representative.

(f) File with the Regional Director for the Thirteenth Region on or before twenty (20) days from the receipt of this Intermediate Report, a report stating that it will comply and setting forth in detail the manner and form in which it has complied with the foregoing requirements.

It is further recommended that, unless on or before twenty (20) days from the receipt of the Intermediate Report the respondent notifies said Regional Director in writing that it will comply with the foregoing recommendations, the National Labor Relations Board issue an order requiring respondent to take the action aforesaid.

TILFORD E. DUDLEY,
Trial Examiner.

Dated: July 27, 1939.

RESPONDENT'S EXCEPTIONS TO INTERMEDIATE REPORT AND TO OTHER PARTS OF THE RECORD AND PROCEEDINGS

(Docketed September 1, 1939)

Indiana & Michigan Electric Company, respondent in the above entitled matter, pursuant to the provisions of Section 33 of Article II of the Rules and Regulations adopted by National Labor Relations Board and effective July 14, 1939, states its exceptions to the Intermediate Report of the Trial Examiner, and to the rulings of said Trial Examiner upon motions and objections made and taken during the hearing, to the several findings, conclusions and recommendations contained in the Intermediate Report, and to the failure to find certain facts established by the evidence, and to rulings of the Regional Director upon motions filed before the hearing, and upon parts of the record and proceedings in this cause.

1. Respondent excepts to the ruling of the Regional Director in overruling and denying respondent's motion to require that the complaint be made more certain and definite in the particulars therein stated.

2. Respondent excepts to the denial by the Regional Director of Respondent's Petition and Motion for extension of time for the hearing on the complaint, which complaint was served upon respondent November 15, 1938, and hearing upon which was fixed for and begun on November 28, 1938.

3. Respondent excepts to each of the "Findings of Fact" numbered from 1 to 90 inclusive, for the reason that they are not the ascertainment and statement of facts from the evidence, arrived at in the judicial process of weighing evidence, of considering the evidence of a wit-

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NOTE: Wherever herein certain names and terms are used they shall be understood as meaning as follows:

(a) "Brotherhood"—Local B-9 International Brotherhood of Electrical Workers.
(b) "Association"—Michiana Electrical Utility Workers Association.
(c) "Board"—National Labor Relations Board.
(d) "Examiner"—The Trial Examiner as designated by the National Labor Relations Boards.
(e) Figures in parenthesis as (288) refer to the page of the official transcript of evidence as made by the Board's Official Reporters.

ness as a whole, or of modifying or eliminating testimony by statements made on cross-examination, but each of said "findings" is an entire abandonment of the usual judicial approach in finding and arriving at such facts from the evidence as should furnish a support and basis of the conclusions flowing therefrom. Instead these findings consist of the narrations of fragments of testimony of witnesses without reference to the other testimony of such witnesses or the testimony of other witnesses; the statement of unsupported conclusions given by a witness, the disregarding of cross-examination which modified or eliminated the statement used in the finding, and an entire failure to consider and state any fact furnished by the evidence of the respondent which might possibly furnish the basis for a conclusion favorable to it.

4. Respondent excepts to finding No. 3 for the reason that it finds that there are 2500 members of Local B-9 International Brotherhood of Electrical Workers, but fails to find according to the undisputed evidence that only fourteen (14) employees of the respondent were members of Local B-9, to-wit: Shields (456), Hoblitzel (702), Edwards (504), Freeman (627), Otis (847), Buckley (897), Hulwick (921), Elkins (944), Ernst (999), Durfey (1026), Kidder (1061), Havlin (1293), Snyder (962), and Robinson (962), and only ten of these were employees at the time of the hearing; three of the 14, or 21%, were foremen. With respect to respondent's employees said Brotherhood had no organization; it was wholly an outside body, whose officers and agents, Michael Boyle and Samuel Guy live in Chicago, Illinois, (52-58, 78) who were attempting to organize the employees.

5. Respondent excepts to finding No. 4 in that it fails to find according to the undisputed evidence that in the year 1937 the total number of employees of respondent was 1004 (Board's Exhibit 5), (2184), and that at all times the membership of Michiana Electrical Workers' Association constituted more than a majority of the employees of the respondent.

6. Respondent excepts to finding No. 5 in that it fails

to find that fact established by the undisputed evidence that the meeting of the Brotherhood in Falcon's Hall in April, 1937, was an open meeting to which all of the employees of the respondent were invited (46, 101, 470, 661, 1841, 1936, 1983, 2077 and 2081) and that the finding unfairly implies, contrary to all the evidence that employees, Livelsberger and Carlton, had no right at the meeting and that their purpose in attending was one of espionage upon the Brotherhood; both were invited to the meeting by Mr. Guy (46) and espionage cannot exist where there is consent. And there is no evidence or finding that they acted with the consent and authority of the respondent, or that they made any report to the respondent.

7. Respondent excepts to finding No. 6 in that it unfairly states only part of the statement by Mr. English, Respondent's Vice-President, to Mr. Guy, local business manager for Local B-9; the undisputed evidence is that Mr. English informed Mr. Guy that respondent had no legal right to favor the organization of its employees by any union (89); and said finding fails to find the admitted evidence of Mr. Guy that he called upon Mr. English to obtain his assistance in organizing the respondent's employees in Local B-9 (86, 113), and thus to cause him to violate Section No. 8 of the National Labor Relations Act, by engaging in an unfair labor practice.

8. Respondent excepts separately to Findings Nos. 7, 8, 9, 10, 11, 12 and 13 in that each of them unfairly states the testimony of Russell T. Harter and the evidence in the case; each of said findings unfairly sets out petty conclusions and mental wanderings of the witness Harter as the implied reasons and purposes for the beginning and the organization of the Association; and each of said findings fail to set out any of the substantial purposes and reasons for the founding and organization of the Association (1926, 264, 180, 335, 361, 571, 736, 1650, 1669). Said findings in setting forth the frivolous talk of one employee unfairly seek to imply that the 762 employees who organized the Association and became members

thereof were motivated by other than substantial reasons in conceiving and forming the Association.

9. Respondent excepts to finding No. 15 which sets out that an employee, Jack Betley, drafted a paper (Board's Exhibit No. 4) and circulated the same among some of the employees. The undisputed evidence is that he alone, without assistance or connection from any other employee, drew this instrument (1988). Said finding unfairly implies, if not expressly states, that it was an important step in causing the formation of the Association; instead the undisputed evidence shows that it was the sole and isolated act of this one employee (1988).

10. Respondent excepts to finding No. 16 in that it unfairly seeks by implication to state as a fact that of those attending the meeting on Sunday morning, May 16, 1939, a preponderance were foremen. The finding states that it was attended by four foremen and two linemen. The undisputed evidence is that it was attended by others (1889, 1930), but said fact is omitted from the findings.

11. Respondent excepts to finding No. 18 which recites that the employees had 1000 cards printed on Sunday, May 16, 1937, but omits the undisputed fact that these employees made a contribution for the purpose of paying for the printing (1895) and that the same was paid from said contributions.

12. Respondent excepts to finding No. 19 for the reason that it unfairly seeks to imply, if not to state that the distribution of membership cards was made by foremen; it specifically gives the names of six men designated as foremen who distributed the same, whereas the undisputed evidence of several witnesses is that the distribution was general among the employees (605, 829, 848, 997, 1446, 1900, 1931). Cards were distributed at the open meeting on May 20, 1937 (1596); also the undisputed evidence is that the man who had the largest part in the distribution of cards and solicitation of members was Jack Betley, a mere employee, (235, 999, 1026, 1061, 1078, 1993); the findings fail to state any of these facts.

13. Respondent excepts to Finding No. 20 which picks out and isolates, from a great amount of evidence upon the purposes of forming the association, a statement of witness Lavell for the unfair purpose of implying that the only purpose in forming the association was "to beat the A. F. of L. and the C. I. O."

14. Respondent excepts to Finding No. 21 which unfairly states the facts in these particulars; that "Jack Betley *laid off work* and drove up North", but the finding fails to state the undisputed fact that at said time he was off duty (1729). This finding also unfairly states the fact that "on company time" he approached tree trimming gangs seeking members, and it unfairly fails to state that he was not on duty at the time, and the work of the tree trimming gangs was, as the finding states, suspended because of rain.

15. Respondent excepts to Finding No. 22 which states that "four employees, including a foreman, are shown by the Association's records to have signed even *before* May 16". The undisputed evidence of seven witnesses was that the membership cards were not printed until May 16 and because four employees, among 762 who signed as members, obviously made a mistake in dating their cards, the finding unfairly and contrary to the evidence attempts to cast suspicion on the evidence of these witnesses and upon the membership records. This finding also states that five employees signed on Sunday, "but the reason for their early participation does not appear". The undisputed evidence and Board's Finding No. 19 shows that on that Sunday the cards were distributed by as many as twenty-six employees, and the finding unfairly attempts to cast suspicion upon the integrity of the execution of membership cards.

16. Respondent excepts to Findings Nos. 23 and 24 which recite that the *embryonic* association was discussed by and a meeting was attended by certain "Assistant General Line Foreman", "Transmission Engineer", "Supervisor of Right of Way", "Class A Operator", and "Acting General Line Foreman". The finding unfairly at-

taches to each of them a high sounding title, but fails to set out any finding on the undisputed evidence that at most none of them has more than three or four employees under him, and none has the power to hire or fire, or to exercise any function of management or direction of respondent's business or policy.

17. Respondent excepts to finding No. 25, which sets out only one statement made by one Collins at the meeting of May 19, 1937 as to the reason for the formation of the Association. The undisputed evidence is that it was a preliminary organization meeting at which the statement was made (1652) and the finding unfairly seeks to assign this statement of one employee as the reason for the formation of the Association, whereas the reasons were embodied in a set of By-Laws adopted by some seven hundred members (Respondent's Exhibit No. 1).

18. Respondent excepts to Finding No. 26 which refers to the employment by those forming the Association of Attorney Ralph H. Jernegan to assist the employees in the formation of the Association; the finding omits to find the conceded facts in connection therewith that said Jernegan had never been employed by or connected with the respondent, and that he was not paid by respondent (2167). It also omits the important fact that Jernegan was employed because he was a member of the State Legislature and was familiar with labor laws. (1592).

19. Respondent excepts to Finding No. 28 in that it unfairly implies that there was something sinister in the fact that "*very hurriedly* Mr. Carlton and Mr. Henderson and Mr. Jernegan and Mr. Lambert went over the plans of procedure that we would follow in conducting the meeting". The undisputed evidence is that Mr. Lambert did not know that he was to preside as Chairman of this organization meeting until he arrived at the meeting and he was required by this fact *hurriedly* to advise with others (557).

20. Respondent excepts to Finding No. 29 for the reason that it unfairly states the evidence of Witness Lam-

bert, and picks out only one isolated sentence from his talk to the organization meeting in order to imply that the Association was a "company union" in the sense that it was sponsored by the respondent and organized at its direction. At all other places Mr. Lambert referred to Michiana as an "association" (565, 576, 577, 578, 590). The quoted sentence is an unfair construction of his complete testimony which takes up about fifty pages of the record. There is not a scintilla of evidence in the record that respondent "did initiate, foster or promote among its employees" such an association, or that the association was formed by employees acting under authority or direction of the respondent. If there is evidence that the Association was a "company union" in the sense that the respondent initiated, fostered and promoted it, then the facts disclosed by such evidence should be found directly, instead of stating such a fact by innuendo.

21. Respondent excepts to Finding No. 30, it unfairly and incompletely finds the fact that at the organization meeting "representatives from respondent's different branches were then called for and requested to take seats on the platform" and that "Acting General Line Foreman Taylor Edgell responded for the Benton Harbor Division". The undisputed evidence is that there were twenty different employees, representatives of the different branches who were called to the platform (Respondent's Exhibit No. 18), but the finding gives the name of only one for the obviously unfair purpose of implying activity of a foreman. The finding further attempts to imply something sinister or unlawful in the statement that Ray Collins was selected from "washroom talk". The finding further states, without evidence to sustain it, " that there were no formal elections to designate them" (the representatives). Some were selected before the meeting. (1036). The undisputed evidence is that these groups sat together in the meeting and that Chairman Lambert asked "each group to send someone forward to represent them", and they were elected (475, 562, 1668). The said Finding states the election of a Chairman of the Association in this

unfair language: " George S. Holmes, respondent's Safety Engineer, was elected chairman of the new organization, although *he was not even present*".

The undisputed evidence is that the duties of Mr. Holmes were to visit crews, observe whether they were exercising the necessary precaution to keep down accidents and to hold safety meetings. He had no employee under him, had no authority to give or require compliance with his orders, and no authority to enforce complaints. (343-345). His selection was most natural, the Board's witness, Earl Freeman, who was most hostile to the respondent, testified that Holmes was 100% respected by the employees of the company. (631). The finding ignores these facts, and seeks by implication to identify him wholly with the management.

22. Respondent excepts to Finding No. 31 for the reason that the obvious purpose of the finding is to imply that only foremen and supervisory employees conducted and participated in the organization meeting. It is unfair and disregards and omits a large amount of evidence on the subject. Even Lester Shields, a witness most hostile to respondent, who was called by the Board, testified that no foreman talked at the meeting (478).

23. Respondent excepts to Finding No. 32 for the reason that it sets out an unfair and prejudiced statement as to the by-laws of the Association, and the proceedings in the drafting of the same. The By-Laws (Respondent's Exhibit No. 1) consists of 15 printed pages; by its adoption by some 700 employees it represents a written record stating all the purposes of the Association; the final by-laws as adopted, and not the talk of some employee engaged in drafting, should have been received in the findings as the statement of the purposes of the Association. The selection of the four words "free from managerial influence" from the preamble, is an unfair selection from a paragraph containing 99 words, which when construed as a whole states the objects of the Association in a manner beyond any possible criticism.

24. Respondent excepts to Finding No. 33 for the

reason that it incorrectly and falsely implies, if it does not directly state, that "no member of another union can be a member of the Association." Neither the preamble nor the by-laws state any such rule or is susceptible of such construction. The preamble states that the Association is "*free from affiliation* with any other union whatsoever", but it has no restriction or limitation upon the right of one belonging to another union to be also a member of the Association. (Respondent's Exhibit No. 1).

25. Respondent excepts to Finding No. 34 for the reason that it unfairly sets out in high-sounding names certain titles of officers of the Association to give the false impression that they are a part of the management of the Association; it should set forth and find the facts that two of them, the President and Treasurer, have no employee under or subordinate to him; and the "Meter Superintendent" has two or three testers under him who test bolts (1807, 1808), and the further facts that none of them have the right to hire and discharge, to make any decisions for the respondent, or to determine its policy or business.

26. Respondent excepts to Finding No. 35 for the reason that it is a studious effort by the use of names and titles to imply, if not state directly, that the bargaining agency of the Association consists of supervisory employees. It should, instead, set out the undisputed evidence showing what their duties are and that none of said persons has any authority to hire, discharge or discipline an employee, and that none has any right or authority to determine policy for respondent or to make any decisions concerning its business.

27. Respondent excepts to Finding No. 37 for the reason that it is nothing but a patent and obvious effort to belittle and ridicule the bargaining powers and ability of the Association. This purpose to ridicule the same was indulged in by the Trial Examiner himself in propounding a question to Witness Calvert—"Didn't somebody say the purpose of the Association was to do unto others as you would have them do unto you." (2147).

28. Respondent excepts to Finding No. 37 for the reason that it states that when the Association's committee met with the Respondent's Vice President and Assistant Secretary, it reported back that the respondent *unofficially* recognized it as sole bargaining agency for all employees. The evidence of all witnesses, five in number, is entirely contrary to this, to-wit, that the respondent's officers always refused to recognize the Association until it was furnished with evidence that the Association sought recognition for all or part of the employees, and if for all that the Association had a majority of all employees. (167, 189, 190, 329, 783, 784, 1602, 2145). The finding unfairly attempts to create the belief that at the first meeting of the Association's Committee and the officers of the respondent immediate unofficial recognition of the Association was given by respondent. The uncontradicted evidence is that the respondent refrained from giving recognition from May 22 to September 28, 1937.

29. Respondent excepts to Finding No. 39 for the reason that it unfairly implies that at the meeting of August. 3, 1937 that respondent's assistant secretary, in advance of the meeting already had possession of a copy of the Association's by-laws, (Respondent's Exhibit No. 20), as indicating some participation in the Association's activities. At said meeting said assistant secretary asked for a copy of the by-laws; and prior to August 3rd there had been many meetings between the Association's officers and the respondent's officers, different instruments had been drawn and submitted, and respondent's assistant secretary had many opportunities to receive a copy of the by-laws. There is no evidence in the record when or how he received said instrument and said finding is stated wholly for the purpose of implying by guess-work and insinuation that there was some improper understanding or cooperation between them. The quoted statement of Mr. Calvert as to an election was an entirely proper one.

30. Respondent excepts to Finding No. 40; said finding discloses nothing but a conscientious purpose of the Association's President to comply with the National Labor

Relations Act, and it has no place in said findings and in no way supports any of the conclusions.

31. Respondent excepts to each of the Findings Nos. 41 and 42 for the reason that they most unfairly and without any evidence to support them undertake to create and state the inference that respondent and the Association were cooperating together in the matter of recognition of the Association as a bargaining agency. The finding says that "September 28, 1937 *was apparently a busy day*" and states that on that day the Association's secretary made an affidavit that the Association had as its members a majority of all employees, which was transmitted to respondent, and on the same day the respondent sent the Association a letter at "South Bend" recognizing the Association as sole bargaining agent. (Respondent's Exhibits Nos. 21 and 22). The affidavit was executed before the Association's attorney, William E. Voor, at South Bend; it contained 13 typewritten lines, it could be prepared in ten minutes at the most; it is two blocks from Mr. Voor's office to the respondent's office; it was carried to the office by Mr. Holmes and Mr. Denman. The letter of the respondent signed by Mr. English, its vice-president is 15 lines in length; it might take ten minutes to dictate and write this; it stated that the recognition was made "in answer to your request of May 20, 1937". There is no evidence where or when the letter suggesting a meeting on October 1, 1937 was written, it consisted of 18 lines. All of these instruments could have been prepared without filling "a busy day". The finding is a characteristic innuendo and is not supported by any substantial evidence.

32. Respondent excepts to Finding No. 43 for the reason that it unfairly quotes a remark of Mr. Holmes, the Association's president in a meeting with the respondent on October 1, 1937, when the Association submitted a contract to the respondent. The remark was that negotiations must not be permitted to drag and "it might be surprising to you to know that a lot of men are much more favorable to other organizations. If no action is received it will be a flop". The finding has been inserted in the

report wholly for the purpose of implying and insinuating a cooperation between the Associaton and the respondent, which the other and substantial evidence shows did not exist. Respondent never entered into the agreement until February 5, 1938 (last 8 pages of Board's Exhibit No. 13).

33. Respondent excepts to Finding No. 44 for the reason it is not based upon any substantial evidence that would move a reasonable mind, but on the contrary is based upon guess-work and surmise. It says immediately following the statement contained in finding No. 43 that "consequently" the respondent on October 18, 1937 offered a general increase of five cents per hour. The undisputed evidence is that immediately after the formation of the Association on May 20, 1937 there were discussions for an increase in wages; it was offered October 18, 1937 and was not accepted until October 29, 1937 (Respondent's Exhibit No. 26), and it was accepted after submission to the members and approved by a majority thereof (370). There is not the slightest justification in the finding stating a "consequently" between the isolated remark of Mr. Holmes contained in finding No. 43 and the raise in wages.

34. Respondent excepts to finding No. 45 for the reason that the statement therein that the contract executed by the Association and the respondent on February 5, 1938 "dealt largely with working conditions and grievances on principles already established", is not based upon any substantial evidence, and is contrary to the evidence in the case. This statement is a plain distortion of the record. It is taken from a statement by respondent's assistant secretary made long before the contract was accepted and signed. There were many conferences on the contract, a multitude of things were discussed which were aftewards embodied in the contract (see Respondent's Exhibit No. 24). "It was discussed four or five times—it wasn't ever accepted in its originality". (806). "It was discussed several different nights". (806). Mr. Calvert refers to its modification "back and forth" (2158). The respondent had many conferences on the same (2170). The agree-

ment was in process of formulation from June 30, 1937 to February 5, 1938.

The agreement executed February 5, 1938 (Respondent's Exhibit No. 13) dealt with and established wholly new rights as follows:

(a) Transfer of employee from one district to another—agreement to transfer to new residence by company.

(b) Employee doing emergency work for more than six hours to be furnished a meal or permitted to return to his home for the same.

(c) Seniority rule in lay-offs.

(d) Seniority in re-hirings.

(e) Seniority defined.

(f) In cases of discharges or lay-off reason or reasons to be furnished employee on request.

(g) Classification of employees required.

(h) A plan for handling grievances.

(i) A plan for the arbitration of controversies between employees and company.

(j) It made obligatory, instead of voluntary, rules as to hours of work, payment for overtime and emergency work.

(k) It made obligatory, instead of voluntary, rules with reference to vacations and pay during vacations and illness.

Said finding is not based upon any substantial evidence, instead it is based upon a mere fragment of the evidence of one witness who made the statement long preceding the final formulation and execution of the contract. It is an obvious and unfair effort to minimize the bargaining power of the Association and the beneficial results obtained by it for the employees.

35. Respondent excepts to finding No. 46. It recited that on March 1, 1938 the respondent submitted to the Association a classification of employees, which on March

22, 1938 accepted the classification. The finding is an unfair and studied effort to convey the false thought that the negotiations and bargaining between the respondent and the association were perfunctory affairs, and that acceptance followed an offer as a matter of course. The uncontradicted evidence is that there were several meetings between respondent and the association upon the subject of classification of employees, the meetings were with the association's attorney and executive committee, and it was the "final draft" which was submitted on March 1st and accepted on March 22nd. (199, 370, 801, 2175, 2176). The unfairness of the finding is further shown by Respondent's Exhibit No. 28, a letter from Mr. Voor, Association attorney, written December 28, 1937, which contained a virtual ultimatum on the subject of a classification. The finding also unfairly refers to *one* meeting with respect to grievances, and *one* meeting is referred to unfairly to minimize the accomplishments of the association's bargaining power. The record shows many meetings, conferences and accomplishments concerning grievances of employees. (200, 371, 373, 808, 809, 2163).

36. Respondent excepts to finding No. 47 for the reason that it is not a fair and impartial statement of facts as established in the record. It is a patent and obvious effort to create the false belief that the four foremen named alone initiated the meetings held Sunday, May 16, 1937. The established fact is that it was attended by from 21 to 26 employees.

37. Respondent excepts to finding No. 48 for the reason that it unfairly sets out and isolates from the whole of the evidence of George F. Dequine his statement that a foreman "is handling the company's cash register, and he must handle it efficiently, he is spending the company's time 'and material". Mr. Dequine also testified (1820) "the humblest linemen either conserve or waste the company's time—every man that works for the company spends the company's money".

38. Respondent excepts to finding No. 49 for the reason that it is merely another unfair statement to convey

the belief that the first group, which is described with the names of foremen, was constituted only of three or four foremen, whereas it was constituted of from 21 to 26 employees. The statement as to Henderson has no support in the record since he does not have any foremen whatever under him. (1640-1682, 1787-1789). In truth the finding is directly in conflict as to said Henderson with finding No. 50 which shows that he does not have a single foreman under him, those under him are mere draftsmen and right of way agents. The undisputed evidence is that he has no authority to determine company policy, or to do anything on his own initiative except to do a small repair job (1642).

39. Respondent excepts separately and severally to findings numbered from No. 47 to 75 inclusive, and to each of said findings for the reasons: The only charge in the complaint against the respondent with respect to the formation of Michiana Electric Utility Workers Association is that "from May 1, 1937 down to and including the date of this complaint, respondent, through its officers and agents, has advised, urged, threatened and coerced its employees to join and pay dues in said Association". The evidence totally fails to support this charge. Instead it establishes conclusively the following facts: (a) that the executive and controlling officers of respondent directed and warned all superintendents and heads of departments to refrain from any act encouraging or discouraging joining any labor organization or activity therein, and directing them that its employees had a right to determine for themselves the joining of any labor organization or refraining from joining. (1400, 1555, 1742, 2165, 2188). The evidence is undisputed that the officers, superintendents and heads of departments had absolutely no part in conceiving, promoting or forming the Association (1400, 1552, 1753, 2165, 2166, 2189). No financial contribution or anything of value was paid or given by respondent to the Association (842, 1557, 1558, 1754, 1895, 1903, 2166, 2189). The Association never met on the respondent's property or used any of its property in its service or promotion, all

the meetings were held in a church hall, Y. M. C. A., lodge room or in private homes. The Association's attorneys were employed by it for the reasons (a) that Jernegan was a member of the State Legislature and was familiar with labor laws (1592), and Voor had represented many labor unions (2167); neither of these attorneys had ever been in the employment of the respondent and the respondent did not in any way compensate them (2166-2168). There is not a word of evidence that any officer, superintendent or head of a department of respondent expressly or by implication authorized any foreman or supervisory employee to do anything with respect to the formation of the association. There is a total lack of evidence to support the charge in the complaint; said findings fail to support the charge.

40. Respondent excepts separately and severally to findings numbered from 47 to 75 inclusively, and to each of them for the following reasons: that even if certain foremen and supervisory employees (11 in number as named in the findings) were active in the formation of the association consisting of 762 members, said fact is not and cannot be a violation of law by this respondent. The findings name 11 foremen and supervisory employees out of a total of 1004 employees of the company (Board's Exhibit No. 5), and finds that they were active in the formation of the Association. Finding No. 56 is to the effect that at the most 32 supervisory employees became a part of the membership consisting of 762 employees. There is a total lack of evidence that these eleven supervisory employees were acting for the respondent. Before it can be found in law that the association thus formed was serving the respondent instead of the employee, there should be some evidence and some finding to that effect. The evidence is all to the contrary. The Association obtained a five cents raise for employees, it obtained a classification of employees which the respondent was unwilling to give (199), it rejected the respondent's plan to set up a working policy governing employment and conditions thereof (806-807), it required the respondent after many meetings (806, 2158,

2179) to enter into a contract, which covered many matters, such as (a) a workable plan for handling grievances, (b) for the arbitration of controversies, (c) fixing rights in cases of lay-offs and discharges, protests and hearings for the same, (d) establishing the seniority rule, (e) fixing the time of a working day and week, (f) defining overtime and emergency work, (g) providing for vacations and pay during vacations and illness. Many grievances of employees were adjusted and new and improved classifications of employees were secured. There was not a single thing done by the Association in its dealings with the respondent that could be said by a fair mind to have operated to the benefit of the respondent, or to the disadvantage of an employee. In the entire record of evidence there was not a single employee that complained that the accomplishments of the Association were detrimental to the employees or any of them, except a group known as tree-trimmers, who complained that at the same time their pay was increased five cents per hour, the company reduced their hours to 40 hours per week. They had been working longer hours and their decrease in pay arose wholly because the respondent put into effect a uniform schedule of hours applicable to all employees. When the undisputed record shows that every act of bargaining of the association was to the benefit of the employees, there is rebutted every imputation or inference that the Association is not a free bargaining agent; there is rebutted every implication or inference that the employer is in any way dominating the activities of the association.

41. Respondent excepts separately and severally to findings numbered from 47 to 75 inclusive and to each of them for the reason that even if it be found that eleven supervisory employees did initiate the formation of the Association and even if they do possess influence and power over employees under them, nevertheless the undisputed facts in the record show (a) that the association of 762 members was formed at an open meeting consisting from six to eight hundred employees (782, 1595, 1654); and after its organization its decisions must be by majority

rule (362). The statement of policy was turned down by majority vote (807), and the bargaining council had no authority to accept anything on behalf of the employees (812, 813). The by-laws expressly permitted foremen to be members. The findings should not indulge in inference and guess-work as to the powers and ability of foremen to influence the Association's actions in favor of the employer in a case where the undisputed evidence shows that the Association is functioning by majority control of 762 employees and free from dictation and control from the respondent. It would be a strange construction of the Act if the efforts of the employees to organize could be frustrated and destroyed by attributing the acts of eleven of their number to the respondent, without any showing that it had ever authorized, consented to or was aware of such acts.

42. The respondent excepts to findings numbered from 47 to 75 inclusive, and to each of them, for the reason that the undisputed evidence shows that the Association in good faith took every reasonable precaution to constitute its membership in accordance with the law. Questions arose from time to time as to the right of some or all of the 32 foremen and supervisory employees to be members. It employed an attorney wholly disconnected with respondent, who would not take the employment until assured that the organization was free of company influence. (1593). Henderson refused to sign until assured by the attorney that he was eligible to membership (1954). Collins was advised by the attorney that he was eligible to membership (2054, 2086). In the beginning of the organization the attorney advised that the organization should be free of domination by the company (740, 776). Holmes, President of the Association testified: "It was questioned whether foremen were eligible. It was thought that they would be, but it was advised that they do not take too active a part in the organization, so as to make the men working under them feel the union was run by the higher ups". He said that the only way to tell was to wait until some court made a ruling specifying a

line of demarcation (306). Marsh testified (1615) upon the subject where "management ends and where employees begin" as follows: "I personally considered that any one should be eligible who is not connected with the management, in other words, who has not the right to hire and fire" (1616). The record is replete with statements of a sincere effort of the Association to be within the law as to eligibility and with statements of uncertainty of the law and court decisions as to eligibility of foremen. The findings should not indulge in guess-work and inference as to the power and influence of eleven supervisory employees among 762 members in a case where the facts show an honest, if mistaken, conclusion as to those eligible, and respondent should not be held guilty of Sec. 8 because the Association in good faith included possibly 32 in its membership, about 4% thereof.

43. Respondent excepts to findings numbered from 47 to 75, and each of them, for the reason that the evidence shows the 32 supervisory employees became members of the Association without direction or authority from the respondent so to do; that they did so of their own initiative and under by-laws which permitted their inclusion. It would have been a violation of the National Labor Relations Act if respondent had demanded or requested these 32 employees to abstain from joining the Association or being active therein.

44. Respondent excepts to findings numbered from 47 to 75, and each of them, for the reason that there is no charge in the complaint to which said findings, or any of them, can relate or apply. There is no charge that respondent violated the National Labor Relations Act by its failure to direct or require that the 32 supervisory employees who joined the Association should not be members thereof or participate in its activities or business.

45. Respondent excepts to finding No. 54 for the reason that it is an unfair statement as to the position and authority of Mr. Holmes, president of the Association. The undisputed evidence is that he has no one under him,

he has absolutely no power to give orders or directions to employees or to determine any question of policy for respondent (343, 345). The question of his relation to the employees and management should be determined by his duties and authority. He is a mere employee even though he is fourth in line from the general manager. There is no evidence whatever in the record justifying or suporting the statement in the finding that "his position ranks even with a General Line Foreman, Service Superintendent, Chief Inspector, *etc.*"

46. Respondent excepts to findings numbered from 66 to 69 inclusive, and to each of them. There is no charge in the complaint that the respondent engaged in an unfair labor practice within the meaning of the Act by transferring Earl Freeman from one crew to a less advantageous one whereby he received less overtime and compensation. The findings are wholly outside of any charge before the Board.

47. Respondent excepts to findings numbered from 66 to 69 inclusive and to each of them for the reason that they do not correctly state the facts with reference to the transfer of Earl Freeman. Said Freeman himself testified that there were two linemen in his crew, which had been engaged in "house work" or repairing lines running into dwelling houses. When the crew arrived at a job Freeman would always grab a ladder and go to the house end leaving the other member of the crew to climb the pole (2211). These facts were corroborated by three other witnesses. (2110-2112, 1846, 1847, 2062-2065). When he was directed by the foreman "to share" the work Freeman became grouchy and non-cooperative and was transferred to another crew for his own good as well as the good of others. The complaint as to his conduct was made by his foreman, Miller (2065) and Freeman himself testified that Miller "is a real nice upstanding fellow" (634). Every witness testified that Freeman's union activities had nothing to do with his transfer. All witnesses testified that shifting of crews was necessarily a common

thing, because of the different character of the jobs; that the men understood this. (2067, 1710-1714, 1847). Hawk, the other lineman in Freeman's crew was likewise transferred (1847), the crew itself was abolished (2067-8), and there is nothing to which he can be transferred back to. The findings that he was transferred because of union activity are not sustained by any substantial evidence, and his conduct, according to his own evidence, would have justified a more severe discipline of him than was administered.

48. Respondent excepts to finding No. 69 in that the same is an unfair statement as to the reason for the transfer of Earl Freeman wherein it recites: "Thus, Freeman was transferred to another job with a loss in pay of $10 to $50 per month merely because his foreman said he didn't like his attitude, because the "corners of his mouth dropped—or his head went up". The quoted statement comes from a question of the Board's attorney to witness E. J. Miller (2122). It was put into his mouth. Freeman's transfer was due wholly to his foreman, Miller. The entire evidence of Miller, corroborated by Freeman himself (2211) shows that his transfer was due to his unwillingness "to even up the work" with his fellow worker, and that he became surly about it (2107-2112), and at times would not cooperate with his foreman (2111). Miller testified, and it is undisputed, that when he acted in this matter he did not know that Freeman was a member of the Brotherhood. (2120). Under the finding and the uncontested evidence the transfer was initiated wholly upon the request of Miller, who, by Freeman's own mouth "is a real nice upstanding fellow" (634). The finding is an unfair statement of the evidence, and is not supported by substantial evidence in the record.

49. Respondent excepts to finding No. 70 for the reason that it is not supported by any substantial evidence. The incident given was wholly a personal quarrel between two employees about union activities; neither the finding nor the evidence show any connection of the re-

spondent with either of them; there is no evidence whatever from which it could even be implied or guessed at that in this quarrel either employee represented the respondent or had authority from it do do or say what he did. Each of said employees had an entire legal right to be hostile either to the union or the association, and each had the legal right to support either. Carlton, the employee quoted, did not hold such a position with the respondent that his statements were evidence of the respondent's policy, and the inference of respondent's hostility to the Brotherhood or to membership therein drawn from the quoted statement does not amount to a scintilla of evidence.

50. Respondent excepts to finding No. 71 for the reason that it is not supported by any substantial evidence. It is merely a strained effort to make out a discrimination. The undisputed evidence is that respondent's superintendent promoted Edwards to be a foreman when he knew that he was a member of the Brotherhood; Edwards testified twice (486, 490) that he was never asked to sign a card or become a member of the Association, although he says he signed a card and paid a dollar (490). He said he asked to become a member of the Association (494). He said he was a member of the Brotherhood (492); he testified he was told by Superintendent Dequine, who was at the head of the Department in which he worked, that "any employee of the company could affiliate with any labor organization which he might choose" (502), that "it was not his purpose or the purpose of the company to try to tell you or any other employee what labor organization to put in with"; Edwards testified that his foreman had never asked him to be a member of the Association and had never said anything to him in criticism of his membership in the Brotherhood (504); he said he felt entirely free to act with reference to membership in the Association (511); he said he had no reason to believe that he would be discriminated against (512). About overtime he testified that prior to May, 1937 he "received quite a lot of overtime, trouble calls

at night" and since then he has received one (513), that he has never spoken to his foreman or any one about it (513), that he was not sufficiently interested to make any inquiry about the matter (514), he understood that he had the right personally to go to the management about any grievance, and yet he did not do this (515-6), that he has made no inquiries whatever of either his foreman or fellow employees about trouble calls (519-520); he had no telephone (518), he himself, gave ample reasons why he was not available for emergency calls after hours of work. He stated that after October, 1937, he spent his evenings, Saturdays and Sundays, soliciting for the Brotherhood (504), that he was not always at home, the company "only paid me eight hours per day" (519). He next complained that beginning "last fall" 1937 he was shifted from one crew to another and had three or four foremen (526-527). He himself said "this is to be expected" (527); that it was to be expected because of the changing character of the work; and that all linemen, without regard to union membership, were shifted, was established by the evidence of many witnesses (1846-1847, 1710-1714, 2063-2067).

Each of the statements contained in finding No. 71 is contrary to the substantial evidence applicable thereto; none is sustained by a scintilla of evidence.

51. Respondent excepts to finding No. 71 for the reason that it is not a "finding" within the meaning of the Rules of the Board and of the common understanding of the term. That "Edwards testified he had been discriminated against" is not a finding that he was discriminated against.

52. Respondent excepts to finding No. 72 for the reason that none of the statements therein, viz; (a) the determination of what constituted a two man job *merited investigation*, (b) that Edwards did not take it up with the Association as a grievance because he was opposed to the Association, and (c) he could not take it up with his foreman because his foreman was active in the Association, is sustained by any substantial evidence, and each of

them is frivolous, and in no way supports any charge in the complaint. The finding says the complaint about two-man jobs merited investigation. Superintendent Dequine testified (1716) that whether a line job is a one-man or a two-man job is so indefinite that no one can write a rule upon it, that it varies constantly with the nature of the work, that many factors on the jobs enter into it, and that no one can determine it but the foreman, and that there has been no complaint about the matter (1719). Edwards testified that he had no idea how often it had happened (540), that he knew the policy of the company on safety (541), that he believed that Mr. Holmes would "go as far as he could with it" (547) but nevertheless he would not and did not take it up with him because he, Holmes, was a member of the Association (544), he said he did not know whether Mr. Holmes had reported the matter (547). Edwards said he knew he had the right to go to the very head of the company with any complaint, he made none to his fellow workers, he made none in the safety meetings (538), he made none to the head of his department (1718). Certainly an employee cannot nurse a grievance to himself and be excused from lodging it with those who have the power to correct it because his foreman, or the one lecturing on safety happens to be a member of another labor organization. A "merited investigation" of a secret complaint could hardly be made. It was a frivolous complaint made and paraded only at the time of the hearing. And the statement in the findings that one is to be excused from taking up a complaint through a union because he is opposed to it is a legal anomaly, and the suggestion that an employee can nurse a secret grievance from his employer and thus make, or contribute to a set of facts making his employer guilty of a violation is chimerical.

53. Respondent excepts to findings Nos. 74 and 75, and to each of them for the reason that they do not support any charge in the complaint, and the conclusion in finding No. 75 is wholly unjustified by the evidence, and is not sustained by any substantial evidence. The respondent

had tree trimming crews that went from town to town. The evidence is that members of these crews lived in different parts of the towns (1042), it was a rule of the company that the men must congregate in the morning where their employment ends in the evening so as to avoid delay (1046, 1050), the truck was in charge of one Peach, a solicitor, not a foreman (1032, 1053, 1785); when it was desired to trim a property owner's trees along the line he was the one who solicited permission. On the day in question one member of the crew failed to report at the truck according to the rule, Peach drove away without him, and went by the place where the member lived, and thereupon a quarrel arose between Peach and one Durfey, another member of the crew, who called Peach vile names (1736), this was reported to the foreman Mr. Lillard who in turn reported the same to Superintendent Dequine (1730-1738) and a conference was held at the latter's office at which Durfey was not even censured. Peach was censured and was told that he had "leaned over backwards" (1735). Peach was a member of the Association and Durfey of the Brotherhood. Thus it appears that the foreman did not use any power to support his own union or discourage the other, but that the matter was handled entirely by Superintendent Dequine, who censured little or none the member of the Brotherhood who argued for the breaking of a rule and used vile language towards his fellow employee, but censured the member of the Association who had insisted on observance of the rule and who was the object of the vile language.

54. Respondent excepts to finding No. 75 for the reasons that (a) there is no charge in the complaint to which said finding is applicable, (b) it is not sustained by any substantial evidence, and (c) it discloses nothing with reference to favoring a union, or encouraging or discouraging membership in any union. Under the evidence the story of Havlin is fantastic and it is incredulous that it should be given any weight with respect to labor relations. He was a lineman who had been in the service

of respondent for thirteen years (1292), he became a member of the Brotherhood October 14, 1937 (1293). The respondent had gone to great expense to equip every truck and lineman with a complete set of rubber goods and "hot sticks" to protect them, and safety meetings were constantly held, respondent insisting upon the use of these protective articles (1719-1727). Havlin while in respondent's service had suffered eleven different accidents (1833), he did not deny this number (1322). His testimony was taken at his home where he lay terribly burned because he did not use protective material (1322). He suffered this accident August 18, 1938. He complained bitterly because about October 14, 1937, Carlton, a foreman "bawled him out in a very angry way about he had not used rubber goods to cover the wires while he was doing the work. ** * ** wanted to know where the hell my rubber goods was". He replied it was on the truck. (1321). He made the claim that on the day before the accident his foreman Howe had directed him to do line work without rubber goods, he did not do the work. The next day he went to see one McKinder, a foreman, who had no supervision whatever over him and he testified that McKinder told him "pin a blanket around the switch stake and tie it to the arm and keep it about eight inches away from the phase". (1328). Thereafter on that day he was injured. There is no evidence whether he followed McKinder's suggestion, and neither is there any evidence that this suggested method was unsafe, as the finding states. There is no evidence why Havlin did not take his complaint to his superiors or to Supt. Dequine, the statement in the finding that he did not "for fear of the *hostile* association" is pure guess-work. There is not a word of evidence in the record of testimony that either Howe or McKinder was a member of the Association, that Havlin knew either of them to be a member, or that either of them knew that Havlin was a member of the Brotherhood. To make any connection between this unfortunate accident and the labor relations of the respondent and its said employee is a fantastic perversion of the evidence.

55. Respondent excepts to conclusion No. 76 for the reason that it is based upon the preceding findings which are not supported by substantial evidence, and for the reason that they again unfairly attempt to create the belief that the organization of 762 employees into the Association was due to eleven foremen or supervisory employees. And it avoids the established rule of law that if in the operation of the Association as evidenced by its many acts beneficial to the employees, the Association has proved its ability to serve beneficially the employees, free from dictation or control of the respondent, it cannot be condemned even if foremen did have something to do with its formation.

56. Respondent excepts to conclusion No. 77 for the reason that the substantial evidence does not establish that because 32 foremen or supervisory employees became members of the Association with 762 members and because eleven of these supervisory employees were active in its formation, thereby the Association lost its ability to represent the employees as a free bargaining agent. There is not a word of evidence in the record that any of these eleven, or any other number was acting for the respondent in said organization, or that any of them had any authority from the respondent so to act.

57. Respondent objects to conclusion No. 78 for the reasons that it is based upon the preceding findings which are not established by substantial evidence, and is contrary to the spirit of the National Labor Relations Act. The eleven foremen and supervisory employees who were active in the formation of the Association had a right under the law to join a labor organization if other employees desired them to join, otherwise the employees are denied the right of self-organization which the Act secures for them. Here 762 employees out of 1004 adopted after five months of preparation a set of by-laws which made them eligible. To deny them the right to admit supervisory employees is to deny the 762 the right of self-organization as they may determine. Having the right to become members these supervisory employees had a right to be active members.

58. Respondent excepts to conclusion No. 79 for the reason that it states a requirement on the part of the employer which is contrary to and in violation of the National Labor Relations Act. It states that the respondent did not instruct its foremen not to interfere in any way with unions. The employees, including the foremen, had the right to self-organization, and it would have been a violation of Section 7 of the Act for the respondent to have instructed them to join or not to join, or to participate or not to participate in any certain labor organization.

59. Respondent excepts to conclusion No. 80 for the reason that it is contrary to all the substantial evidence in the case. It is not supported by a scintilla of evidence.

60. Respondent excepts to conclusion No. 81, the part that is to the effect "that it is dominating and interfering with the administration of a labor organization of its employees" by the activities set forth in the findings is not sustained by any substantial evidence. The part to the effect that respondent "is contributing financial and other support to said labor organization" is not supported by a word of evidence. It is wholly contrary to every word in a great volume of evidence, which establishes that the respondent has contributed nothing to the Association either directly or indirectly, it has not permitted the use by the Association of any of its property, or in any way benefitted the Association (842, 1557-1558, 1659, 1754, 1895, 1903, 2166, 2189).

61. Respondent excepts to conclusion No. 82 for the reason that it is not sustained by any substantial evidence, and that part of it (as stated in No. 60 above), is contrary to all the evidence in the cause.

62. Respondent excepts to conclusion No. 83 and as to each of the matters therein set forth, for the reason that the same is not established by substantial evidence, and is contrary to the evidence.

63. Respondent excepts to Conclusion and Recommendation No. 1 (page 36 of the Intermediate Report) for

the reason that it is based upon findings which are not supported by substantial evidence, but upon findings which are the products of conjecture and guess-work, and respondent makes this exception as to each of said matters therein referred to.

64. Respondent excepts to that part of Conclusion and Recommendation No. 1 (page 36 of Intermediate Report) which states that respondent "by transferring lineman Earl Freeman from one crew to a less advantageous crew * * * has engaged in and is engaging in unfair labor practices effecting commerce within the meaning of Section 8 (1) and Section 2 (6) and (7) of the Act", for the reasons:

(a) That the same is not based upon any substantial evidence, and is contrary to the evidence in the cause; and is based upon findings not established by substantial evidence, and which are contrary to the evidence.

(b) There is no charge in the complaint that respondent discriminated against said Freeman by making said transfer; there is no issue presenting said question for decision, and the Board has no authority or power to adopt said recommendation and make any order thereon.

65. Respondent excepts to Conclusion and Recommendation No. 2 (page 36 of Intermediate Report) for the reason that it is based upon certain findings which are not supported by any substantial evidence, and upon other findings which not only do not have any support in the evidence, but are contrary to all the evidence in the case.

66. Respondent excepts to Recommendations Nos. 2, 3 and 4 (pages 37 to 39 of Intermediate Report) and to each of them for each of the following reasons:

(a) Each is based upon findings which either are not supported by any substantial evidence, or which are contrary to the evidence.

(b) The same are based upon findings which do not relate to any charge in the complaint. The charge, (if it could be said to be one), established by the findings is that while the evidence does not show that respondent did in any way assist or promote the formation of the Association, or that it advised, urged or coerced its employees to join the Association, nevertheless it became guilty of an unfair labor practice by reason of the fact that 32 of its foremen and supervisory employees became members of the Association and eleven of them were active either in the formation or conduct of the Association and that respondent failed to order or require them to refrain from membership or activity. There is no such charge in the complaint and respondent was not fairly advised by the complaint that any such issue was presented or that there would be any attempt to establish any such charge.

(c) The only charge attempted to be stated in the finding or conclusions is that respondent became guilty of an unfair labor practice because it failed to warn its 32 feromen or supervisory employees to refrain from membership and activity in the Association composed of 762 employees. Acts of employees in forming labor unions are outside the scope of their employment and authority; before the employer can be held liable for their acts, there must be evidence that the employer held them out as persons having authority to advise others with respect to joining or not joining labor unions. There is no such evidence, and none of the findings state or even imply that there is any such evidence. The matter of titles, such as "Supervisor", "Engineer", "Right of Way Engineer", "Safety Engineer", etc. so repetitiously stated in the findings amounts to nothing—titles are unimportant, and add nothing to the facts.

(d) The Recommendations are so indefinite as to be impossible to effectuate by order of the Board.

(e) There is no charge in the complaint alleging

any unfair practice as to said Freeman, and therefore parts 4 (a) and (b) are not based upon any charge.

(f) The parts 4 (a) and (b) requiring respondent to offer Earl Freeman, a lineman, reinstatement to his former position, and to make him whole for losses of pay, is indefinite and uncertain. The evidence is that the position was abolished, and there is no way of determining what overtime he might have had. It is not based upon a finding supported by any substantial evidence.

67. Respondent excepts to the action and ruling of the Trial Examiner in granting the motion of the Board's attorney made December 7, 1938, over respondent's objection, to amend the complaint, in the seventh line of Paragraph 5, by adding this clause: "On or about February 5, 1938 Respondent entered into an illegal sole collective bargaining agreement with Michiana Electrical Utility Workers Association for a term ending March 22, 1939" (1577).

There was no such issue presented by the complaint as filed. The hearing of this cause was begun November 29, 1938, the Board concluded its case and rested on the morning of December 6, 1938 (1339-1343); the respondent proceeded with its evidence throughout December 6th and part of December 7th. The Supreme Court of the United States on December 6, 1938 handed down its opinion in Consolidated Edison Company vs. National Labor Relations Board, 83 Law ed. 131. Because thereof the Board's attorney on December 7, 1938 made said motion to amend the complaint, which was granted by the Trial Examiner, but the Association was not made a party to the proceedings and neither did it at any time intervene as a party.

The respondent objected to granting the motion to amend for the reason that no such charge was contained in the original complaint—that no notice had been brought to the respondent that the Board intended to rely upon any such charge; that it was unfair to amend the complaint at said time as it presents a wholly different charge than any made in the complaint, and that no time or prepara-

tion upon the amendment had been given respondent, and that there had been given no opportunity to examine the text of said decision of the Supreme Court. (1577-1579).

The action of the Examiner was arbitrary and unwarranted, and amounted to a denial of a fair and full hearing to which respondent was entitled.

68. Respondent excepts to each and all of the findings, conclusions and recommendations, and to all of the proceedings shown by the record and asks that the same be set aside and a new hearing ordered for the reason that respondent was not accorded a fair hearing as fixed by fundamental requirements of fairness which is the essence of due process of law. The substantial elements of due process demanded that there be a hearing by a fair and disinterested person capable of making impartial findings based upon the complaint and gathered from the evidence. This kind of hearing the respondent was not given. The complaint alleged that respondent "did initiate, foster and promote among its employees" the Association. This charge could be proved only by evidence showing that said acts were done by the authorized agents of the respondent. The Board was represented by an attorney who endeavored to produce evidence sustaining the complaint and failed. The Trial Examiner devoted himself assiduously throughout the hearing in developing the charge, not stated in the complaint, that respondent became guilty of an unfair labor practice because some of its supervisory employees joined and became active in the Association, and because respondent did nothing to warn or request such employees not to join or become active in said Association. The Trial Examiner cross-examined witnesses at much greater length upon this charge than did the Board's attorney. His industry and zeal in developing his theory is disclosed by the record in the following pages as compared to the work of the Board's attorney.

EVIDENCE AS TO SUPERVISORY CHARACTER

NAME OF WITNESS	CROSS-EXAMINATION BY BOARD'S ATTORNEY RECORD	NO. PAGES	CROSS-EXAMINATION BY TRIAL EXAMINER RECORD	NO. PAGES
George S. Holmes	255-262	8	341-387	47
	267-	1		-
	269-270	2		-
	276-277	2		-
	286-287	2		-
	289-294	6		-
	296-300	5		-
George F. Dequine	1758-1771	14	1772-1791	20
	1818-1819	2	1793-1817	15
	1833-1836	4	1823-1932	10
E. F. Livelsberger	1857-1868	12	1868-1874	7
Wm. LaVelle	1904-1907	4	1908-1914	7
	1915-1919	5	1920-1922	3
Russell T. Harter	1933-1935	3	1935-1946	12
	1946-1950	5	1952-1954	3
Leo Ringen	1959-	1	1960-1964	5
Frank Miles	1876-1878	3	1979-1981	3
Jack Betley	1991-1999	9	2000-2012	11
Thomas F. English	2192-2194	3	2194-2199	6
	Total	91		149

Not only did he take a major part in the examination of witnesses upon the part played by supervisory employees, but he requested (2179) the preparation by respondent of a chart of employees and department heads (Respondent's Exhibit No. 32). It was he who requested that all the membership cards of the Association be put into evidence (2203-2204) so that he could make a tabulation of employees, and ascertain which of the supervisory employees were also members of the Association. The finding that 32 members were foremen and supervisory em-

ployees was based wholly upon this evidence obtained by the Examiner. He himself questioned, and required one of respondent's witnesses to relate facts about the discharge of employees in 1928 or 1929, six or seven years before the National Labor Act went into effect (1745). His zeal and partial conduct is especially illustrated in the case of Earl Freeman. After all his evidence was given on direct and cross-examination and he was excused as a witness, he volunteered a statement which had no relation to any charge (643), thereupon the Trial Examiner inquired of him (644):

"Have you been persecuted?" And in answer the witness volunteered the statement that he had been transferred from one crew to another and lost overtime, he was examined at great length by the Examiner and upon this evidence the Examiner has made a finding of discrimination. The findings, unsupported in many particulars by evidence, are also ample evidence that the Judge or Trial Examiner in this case was in no sense such an impartial trier of the facts as is required by the due process clause of the 14th Amendment. His failure to find any facts favorable to respondent upon many uncontroverted subjects discloses a partisanship. He continually examined witnesses whose testimony was favorable to respondent in a prejudicial and unfair manner; the major part of the facts contained in his findings was developed by him. The record shows that the Examiner entered the hearing with a purpose to make a case against respondent, and therefore respondent was deprived of that full and fair hearing secured to it by the requirements of due process of law.

69. Respondent excepts to the action and ruling of the Trial Examiner in permitting witness R. L. Hoblitzel (656) to be interrogated over respondent's objection, about the discharge of 15 or 18 men by the respondent in the year 1929, several years before the National Labor Relations Act went into effect. (657, 715).

70. Respondent excepts to the action and ruling of the Trial Examiner in permitting and requiring respondent's witness, George F. Dequine, on cross-examination

over respondent's objection to be interrogated about the discharge of men by the respondent in the year 1927 or 1928 (1745-1750, 1756).

71. Respondent excepts to the ruling of the Trial Examiner overruling respondent's motion to strike from the record all the evidence of witnesses Hoblitzel and Dequine that was received with respect to the discharge of employees preceding the date of the enactment of the National Labor Relations Act. (2205).

72. Respondent excepts to the action and ruling of the Trial Examiner in requiring respondent's witness, H. L. Sill, on cross-examination and over respondent's objection to answer that Mr. English and Mr. Calvert, Vice-President and Assistant Secretary, respectively of respondent, had not instructed Department Heads "to notify foremen not to interfere with labor organizations". (1402).

73. Respondent excepts to the action and ruling of the Trial Examiner in requiring respondent's witness H. L. Sill on cross-examination and over respondent's objection to answer whether he had any general conversations *at home* or at the plant *with your friends and acquaintances or business associates about this labor situation.* (1413).

74. Respondent excepts to the failure and refusal of Trial Examiner to find the facts established by the evidence and record:

That the Association was organized May 20, 1937, that it entered into a contract with the respondent on February 5, 1938 (Board's Exhibit No. 13); that the Association had 762 members on September 28, 1937, and 667 members on December 9, 1938; that the number of employees at the time said contract was entered into was approximately 1004; that on the date of said contract the membership of said Association was more than a majority of the employees of the respondent; that said Association was recognized by respondent as the exclusive bargaining agent of all employees on September 22, 1937, and again by said contract. That by said contract each party thereto

bound itself to the other in respect to the several matters set out therein. That said contract precluded strikes and provided for arbitration of labor disputes and was highly protective to interstate and foreign commerce; it contains no term that can be said to affect commerce in the sense of the Act so as to justify its abrogation by the Board. That the parties to the said contract had the right to extend it from time to time. That the Association is a party to said contract with the respondent, the legality of which was put in issue by allegations in the complaint, and that the Association was not made a party to this proceeding, nor did it intervene in the proceeding; and therefore any order requiring respondent to withdraw recognition from the Association, or to disestablish it or to desist from giving effect to said contract would be made without any authority in the Board so to order, and would be invalid.

75. Respondent excepts to each and all of the recommendations and conclusions contained in the Intermediate report for the reason that the record shows that the Association at all times from May 20, 1937 had as its members a majority of all the employees; that a contract was entered into between the Association and the Respondent on February 5, 1938 (Board's Exhibit No. 13), that the Respondent on September 28, 1937 and by said contract recognized the Association as the bargaining agent for the employees; that said contract fixes mutual rights and obligations of the respondent and the employees with respect to labor relations all as set out in the contract and is a valid contract. That the Association was not made a party to this proceedings and never intervened herein. That therefore the Board has no authority to invalidate said contract and the said conclusions of the Trial Examiner requiring respondent to withdraw recognition of the Association, to desist from giving recognition to said contract, and to disestablish the Association as the representative of employees for dealing with Respondent concerning grievances, labor disputes, wages, rates of pay, hours of employment, and other conditions of employment,

are and will be invalid and of no effect; that the Board has no authority under said facts to make any such order.

76. Respondent excepts to each of the findings and conclusions, and especially to the conclusions which would require the Respondent to withdraw recognition of the Association and to disestablish the Association as the representative of employees as stated in Conclusion No. 4. Finding No. 46 states that the contract by its own terms expired March 22, 1939. The parties have renewed the same and it is now in force, the pendency of the proceeding did not preclude the parties from renewing the contract, it did not extend so far as to suspend the right of employees to self-organization or preclude them from making fair contracts, and the findings and conclusions which would invalidate said contract without the Association being a party to the proceedings would be and are nullities.

Respectfully submitted,

INDIANA & MICHIGAN ELECTRIC COMPANY,
Respondent.

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PETITION OF RESPONDENT FOR AN ORDER TO REOPEN CASE AND TO RECEIVE FURTHER EVIDENCE

(Filed February 19, 1940)

To the Honorable Members of the National Labor Relations Board:

The respondent, Indiana & Michigan Electric Company, respectfully petitions your Honorable Board and represents:

1. That the evidence in this matter was received and heard by Tilford E. Dudley, Trial Examiner appointed by your Board; the taking of which evidence was concluded on December 9, 1938; that the Intermediate Report of said Trial Examiner was made and filed with this Board on July 31, 1939 in which he found that this Respondent had engaged in unfair labor practices affecting commerce; that on August 29, 1939, and within the time allowed by your Board, this Respondent filed with your Board its exceptions to said Intermediate Report; that this Respondent also filed with your Board its Brief on said Exceptions; that oral argument upon the issues in said cause was heard by your Board on November 9, 1939, when said matters were taken under advisement, and said cause is still pending before your Board.

2. That the complaint herein was filed by the Regional Director at the instance of the International Brotherhood of Electrical Workers, Local B-9, of which Michael J. Boyle of Chicago, Illinois was International Vice President, Samuel Guy of Chicago was Business Manager and John R. Marks of Michigan City, Indiana was Assistant Business Manager. That said Guy and Marks, and one Earl Freeman were witnesses in said hearing who were called by the Board, and whose testimony was received by the Trial Examiner and relied upon and accepted by him in making his findings and Intermediate Report.

3. That in said hearing (R. p. 52-102), in its Exceptions to said Intermediate Report, (Exception No. 4) and in its Brief filed before this Board (page 11) this Re-

spondent contended that there was not present in this cause a bona fide and good faith controversy with reference to the labor relations of the employees of this respondent with it, nor with reference to unfair labor practices committed by respondent, and that this controversy had not the slightest relation to commerce between the states or foreign countries; that instead it was and is an unlawful effort of said officers of said International Brotherhood of Electrical Workers, Local B-9 to coerce this respondent to require its employees, in violation of the National Labor Relations Act, to join and become members of said labor union. That since the conclusion of evidence in this cause certain events have happened and certain facts have happened which conclusively support respondent's contention, and also establish that the evidence of said witnesses is wholly lacking in credibility.

4. That since November 23, 1938 the following described crimes have been committed in Indiana and Michigan against the property of this respondent:

(a) Dynamiting of cables at sub-station on South Main Street immediately south of Ewing Avenue, South Bend, Indiana, on November 24, 1938, 7:25 P. M.

(b) Sawing off 3 transmission line poles on the Douglas Road ½ mile east of Ironwood Drive in the Vicinity of South Bend on September 5, 1939, at 3:25 A. M.

(c) Dynamiting of tower No. 106 on transmission line, one mile north of Sumnerville, Michigan, on September 8, 1939, at 2:30 A. M.

(d) Dynamiting of tower No. 61 on transmission line, located 5 miles east of Niles, Michigan, and 2½ miles south of M-60 on October 19, 1939, at 9:01 P. M.

(e) Dynamiting of a transmission line pole on the Auten Road 1½ miles east of US-31, St. Joseph County, Indiana, on October 28, 1939, at 8:25 P. M.

(f) Dynamiting of transmission line pole located

on the old interurban right of way, ½ mile south of the Michigan State Line in St. Joseph County, Indiana, ¼ mile west of US-31, on October 28, 1939, at 8:20 P. M.

(g) Dynamiting of tower No. 75 on transmission line near Arcola, Indiana, on October 30, 1939, at 6:10 A. M.

(h) Dynamiting of tower No. 170 on transmission line located 2 miles east of Ligonier, Indiana, and one mile south of US-6, on November 23, 1939, at 9:10 P. M.

(i) Dynamiting of tower No. 119 on transmission line located 2½ miles east of Benton, Indiana, on November 23, 1939, at 9:54 P. M.

That in each of the instances (b) to (i) the lines dynamited or cut carried a high voltage of electricity, and some of said lines were located along public highways or railroad tracks.

5. That since February 1, 1940 said John R. Marks and Earl Freeman, and Parrish Freeman, Frank Lung and Lawrence Yax have been arrested at South Bend, Indiana, charged with the commission of certain or all of said crimes, and with conspiracy to commit said crimes; that all of said persons, excepting said Marks have signed before public officers confessions wherein they admit the commission of certain of said crimes, and that two of said persons, viz: Parrish Freeman and Frank Lung have already pleaded guilty to the commission of certain of said crimes in the St. Joseph Circuit Court where said criminal charges were filed.

6. That said written confessions of all of said persons state that they received from said John R. Marks sums of money for the commission of said crimes; that the total of the money paid to them by said Marks was $2,325.00; that said Parrish Freeman in his confession states that said Marks caused said substation to be dynamited (crime (a) above referred to) for the pur-

pose of intimidating this respondent so that it would not appear and contest the charges before this board, the hearing on which was to begin four days later; that three of said persons in their signed confessions stated that said Marks caused said destruction and dynamiting of property, which began on September 5, 1939 for the purpose of intimidating the respondent and to coerce it into accepting the demands of the said union into requiring its employees to join said union, and for the further purpose of intimidating the respondent so that it would not appear at the oral argument of this cause held by your Board at Washington, D. C. on November 9, 1939. That the confessions of three of said persons state that the commission of said criminal acts were conceived and directed by said Marks; the confession of one of them states that Marks accompanied him when the first case of dynamite used in the commission thereof was obtained.

7. This respondent says further that if all of said confessions are received by this Board that it must conclude therefrom that the officers of said union knew of the commission of said crimes; that the sum of $2,325.00 could not be withdrawn from the treasury of said union for use in the commission of said crimes without their knowledge and participation; and that the character of said officers who testified in this cause is such that their testimony is totally lacking in credibility; and that this entire controversy presented by the complaint has no relation whatever to public policy expressed in the National Labor Relations Act; and that said Act and the powers of this Board have been invoked in this cause for the purpose of promoting the unlawful and criminal purposes of those who were instrumental in causing the Regional Director to file the complaint.

8. That said Earl Freeman was an important witness in said cause; that he was called by the Board and testified to facts which were not corroborated by any other witness or by any circumstances; that the Trial

Examiner made findings against the respondent which have support, if at all, only on the testimony of said Freeman. That said Freeman in his signed confession has stated that he was an employee of the respondent; that while he was such employee he knew of the conspiracy existing among John R. Marks, Parrish Freeman and Frank Lung to destroy the transmission lines of the respondent; that he was a part of said conspiracy, that he participated in the delivery of dynamite to be used for the destruction of respondent's property, and that he pointed out and designated to the other conspirators the poles and transmission lines to be destroyed, and that said John R. Marks paid him for his part in said conspiracy the sum of $500.00. That up until the time of his arrest said Freeman was an employee of respondent engaged in the construction and maintenance of its distribution lines during the daytime; that during the night time he was engaged in unlawful conspiracies to destroy its transmission lines. That his confession shows that he is a person wholly unworthy of belief as to any matter concerning which he testified, and that his testimony given herein should be rejected as untrustworthy.

9. That all of said persons named in No. 5 above are now confined in jail at South Bend, Indiana; that their evidence should be taken promptly while they are present at one place.

10. That upon a hearing this Board should issue subpenas requiring the officers of International Brotherhood of Electrical Workers, Local B-9, to produce all its books, checks and records showing the disbursement of money during the years 1938 and 1939.

WHEREFORE this respondent prays that your Board shall make an order reopening the record and to receive further evidence before some member of the Board or some Trial Examiner designated by the Board, all as authorized by Sec. 35 of Article II of the Rules of this Board, and upon such further hearing a subpena be issued for the

production of the books, checks and records above referred to.

Respectfully submitted,

INDIANA & MICHIGAN ELECTRIC COMPANY,
Respondent,
By (Signed) ELI F. SEBERT,
Its Attorney,

By SEBERT, OARE & DEAHL,
ELI F. SEBERT,
LENN J. OARE,
ORLO R. DEAHL,
JAMES F. THORNBURG,
ROBERT L. OARE,
Attorneys for Respondent.

DECISION AND ORDER

(Docketed February 28, 1940)

STATEMENT OF THE CASE

Upon charges and amended charges duly filed by International Brotherhood of Electrical Workers, Local B-9, herein called the Brotherhood, the National Labor Relations Board, herein called the Board, by the Regional Director for the Thirteenth Region (Chicago, Illinois), issued its complaint and notice of hearing dated November 12, 1938, against Indiana & Michigan Electric Company, South Bend, Indiana, herein called the respondent, alleging that the respondent had engaged in and was engaging in unfair labor practices affecting commerce, within the meaning of Section 8 (1), (2), and (3) and Section 2 (6) and (7) of the National Labor Relations Act, 49 Stat. 449, herein called the Act.

The complaint and accompanying notice of hearing were duly served upon the respondent and the Brotherhood. The complaint alleged in substance: (1) that on or about May 1, 1937, the respondent initiated, fostered, and promoted the Michiana Electrical Utility Workers Associa-

tion, herein called the Association; (2) that from on or about May 1, 1937, until the date of the complaint, the respondent advised, urged, threatened, and coerced its employees to join and pay dues to, in many ways favored members in good standing of, dominated, interfered with, and contributed support to, the Association; (3) that from on or about April 1, 1937, until the date of the complaint, the respondent questioned its employees concerning their union affiliations, advised, urged, and warned its employees to refrain from becoming or remaining members of the Brotherhood, or of any union with outside affiliations; and (4) that on or about December 24, 1937, the respondent discharged Forrest Elkins because he joined and assisted the Brotherhood.

On November 16, 1938, the respondent filed with the Regional Director a petition and motion for extension of time in which to answer until November 25, 1938, and for a continuance of the hearing until the early part of December 1938, on the ground that the respondent's vice president was absent from South Bend, Indiana, when the complaint and notice of hearing were served upon the respondent and upon the further ground that the respondent's attorney was ill. On November 18, 1938, the Regional Director granted the requested extension of time in which to answer but denied the petition and motion for continuance of the hearing.

On November 23, 1938, the respondent filed an answer to the complaint, denying that it had engaged in or was engaging in the unfair labor practices as alleged and claiming to be without knowledge as to whether it was engaged in commerce wlithin the meaning of the Act.

Pursuant to notice, a hearing was held in South Bend, Indiana, on November 28, 29, 30, and December 1, 2, 5, 6, 7, 8, and 9, 1938, before Tilford E. Dudley, the Trial Examiner duly designated by the Board. The Board, the respondent, and the Brotherhood were represented and participated in the hearing.[1] Full opportunity to be heard, to examine and cross-examine witnesses, and to intro-

[1] Although he did not enter his appearance on the record, an attorney for the Association was present at the hearing.

duce evidence bearing on the issues was afforded all parties.

At the commencement of the hearing counsel for the Board offered in evidence certain formal papers, including the complaint and a motion by the respondent to make the complaint more specific. The respondent objected to the admission of the complaint on the grounds of insufficiency and renewed its motion to make the complaint more specific. The Trial Examiner overruled the respondent's objection to the complaint, denied the respondent's motions to make the complaint more specific, and informed the respondent that it could request additional time to prepare its defense at the conclusion of the Board's case. No such request was made by the respondent. We hereby affirm the rulings of the Trial Examiner.

At the beginning of the hearing the respondent renewed its motion, previously made to, and denied by, the Regional Director, for a continuance of the hearing. The Trial Examiner denied the motion and suggested that the respondent renew the motion later in the hearing if additional time were required. The respondent at no time during the hearing renewed its motion. Although the Regional Director might well have granted the respondent's original motion for a continuance of the hearing, the respondent was not prejudiced by the denial of that motion, since the respondent's vice president and attorney appeared when the hearing opened, and the Trial Examiner granted the respondent the right to move for a continuance during the hearing which the respondent failed to do. We therefore affirm the rulings of the Regional Director and the Trial Examiner.

During the hearing counsel for the Board moved to amend the complaint to allege, in substance, that on or about February 5, 1938, the respondent entered into an illegal agreement with the Association for a term ending March 22, 1939. The Trial Examiner granted the motion. The respondent contends that the Trial Examiner erred in granting the motion because the Association is not a

party. This argument is without merit.[2] The respondent also claims that the amendment was prejudicial on the ground of surprise. The record, however, conclusively shows that there was no surprise. Early in its presentation of evidence to support the allegations of the complaint, counsel for the Board offered in evidence the agreement between the Association and the respondent. This agreement was received in evidence without objection from the respondent. At the time the Trial Examiner granted the motion to amend the complaint to allege the illegality of the agreement and again at the conclusion of the hearing, the Trial Examiner granted the respondent the right to move for a continuance to prepare on this issue. The respondent at no time requested additional time for this purpose. Moreover, the original complaint, in alleging that the respondent dominated and interfered with the formation and administration of the Association, gave the respondent notice that the validity of its agreement with the Association would be challenged.[3] We therefore find no merit in the respondent's contention that it was prejudiced by the amendment. The Trial Examiner's ruling granting the amendment is hereby affirmed.

At the conclusion of the Board's case, and also at the conclusion of the hearing, the respondent moved to dismiss the complaint as a whole, and also made several motions to dismiss particular parts thereof. Some of the motions, including the motion to dismiss the entire complaint, were denied at the hearing; the Trial Examiner reserved rulings on others until the issuance of his Intermediate Report. Various other rulings were made by the Trial Examiner during the course of the hearing on motions and on objections to the admission of evidence.

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[2] *National Labor Relations Board* v. *Pennsylvania Greyhound Lines, Inc.*, 303 U. S. 272; *National Labor Relations Board* v. *Stackpole Carbon Company*, 105 F. (2d) 87 (C. C. A. 3), cert. den'd, 60 S. Ct. 142; *National Labor Relations Board* v. *National Licorice Company*, 194 F. (2d) 655 (C. C. A. 2), cert. granted, 60 S. Ct. 108.

[3] Cf. *National Labor Relations Board* v. *Stackpole Carbon Company*, 105 F. (2d) 87 (C. C. A. 3), cert. den'd, 60 S. Ct. 142; *National Labor Relations Board* v. *National Licorice Company*, 194 F. (2d) 655 (C. C. A. 2), cert. granted, 60 S. Ct. 108.

We have reviewed the rulings of the Trial Examiner, including those reserved at the hearing and made in his Intermediate Report, and find that no prejudicial errors were committed. The rulings are hereby affirmed.

On July 27, 1939, the Trial Examiner filed an Intermediate Report, copies of which were duly served on all parties, finding that the respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8 (1) and (2) and Section 2 (6) and (7) of the Act, and recommending that the respondent cease and desist therefrom and reinstate Earl Freeman to his former position with back pay. He granted the respondent's motion that the complaint be dismissed in so far as it alleged that the respondent had engaged in unfair labor practices concerning Forrest Elkins but denied the other motions upon which ruling had been reserved. Exceptions to the Intermediate Report, and a brief in support of such exceptions were thereafter filed with the Board by the Respondent.

On November 9, 1939, oral argument was had before the Board in Washington, D. C. The respondent and the Brotherhood appeared and participated in the argument. At the conclusion of the argument, the Brotherhood filed a document entitled, "Rebuttal to the Respondent's Exceptions to the Intermediate Report and to Other Parts of the Record and Proceedings."

On February 19, 1940, the respondent petitioned the Board to reopen the record to receive certain evidence. We have considered the respondent's petition and find that the matters recited therein have no relation to the issues in this proceeding. The petition is hereby denied.

The Board has considered the exceptions and brief filed by the respondent and the document filed by the Brotherhood. There is no merit in the contention of the respondent that the Trial Examiner denied it a fair hearing. Except in so far as the respondent's exceptions are consistent with the findings of fact, conclusions of law, and order set forth below, we find them to be without merit.

Upon the entire record in the case, the Board makes the following:

Findings of Fact

I. *The business of the respondent*

The respondent, an Indiana corporation with its principal office and place of business in South Bend, Indiana, is a subsidiary of American Gas and Electric Company of New York.[4] It is engaged in the generation, transmission, distribution, and sale of electrical energy and, to some extent, in the purchase and sale of electrical appliances, in the States of Indiana and Michigan.

In the operation of its electrical system the respondent owns four main hydro-electric generating stations on the St. Joseph's River; two of these are located in Indiana and two in Michigan. The respondent also owns and operates a small hydro-electric generating station on the Paw Paw River at Hartford, Michigan, and two steam-generating plants in Indiana. The respondent's properties, and the territory in Indiana and Michigan served by the respondent, are connected by dstribution lines owned and maintained by the respondent. In addition, the respondent's transmission lines are inter-connected for the purpose of exchanging electrical energy with the lines of the Ohio Power Company on the State line between Ohio and Indiana, east of Fort Wayne, Indiana, and with the lines of the Northern Indiana Public Service Company near New Carlisle, Indiana. The respondent furnishes numerous cities, towns, and villages in Indiana and Michigan with electrical energy for light, power, and heat, and supplies electrical energy in Indiana and Michigan to various interstate carriers and manufacturing concerns.

The respondent sold approximately 717,709,057 kilowatt hours of electrical energy during the year 1937, approximately 24 per cent of its total operating revenue being derived from business in States other than Indiana. In 1937 the respondent transferred 8,000,000 kilowatt hours of electrical energy from Indiana to Ohio, and received 396,156,712 kilowatt hours in Indiana from Ohio; transferred 68,279,000 kilowatt hours of electrical energy from

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[4] American Gas and Electric Company owns all of the respondent's common stock.

Indiana to Michigan, and transferred 12,729,020 kilowatt hours from Michigan to Indiana. The electrical appliances sold by respondent, from the sale of which the respondent realized an income of $258,515.12 in 1937, are manufactured mainly by the Westinghouse Electric and Manufacturing Company at its Mansfield, Ohio, and Chicago, Illinois factories, from whence they are shipped to the respondent.

The respondent maintains three operating divisions, located at South Bend and Elkhart, Indiana, and Benton Harbor, Michigan. Each division has a division superintendent or manager who is directly responsible to Thomas F. English, the vice president and general manager of the respondent, whose office is located in South Bend, Indiana. The respondent employs about 1,000 employees in its three operating divisions.

At the hearing, the respondent agreed that it is engaged in interstate commerce within the meaning of the Act.

II. *The organizations involved*

International Brotherhood of Electrical Workers is a labor organization chartered by the American Federation of Labor. It admits to membership electrical workers throughout the United States. Local B-9 of International Brotherhood of Electrical Workers admits to membership employees of the respondent and other electrical workers in Indiana and northern Illinois.

Michiana Electrical Utility Workers Association is an unaffiliated labor organization. It admits to membership employees of the respondent who were born in the United States or who have taken out first citizenship papers, exclusive of department heads and officials or "agents" of the respondent.

III. *The unfair labor practices*

A. Interference, Restraint, and Coercion; Domination and Support of the Association

1. Formation of the Association

The Brotherhood undertook to organize the respondent's

employees in the fall of 1935. In the spring of 1937 the Committee for Industrial Organization gained some membership in the general area of South Bend, Indiana, and its appearance among the respondent's employees augmented the Brotherhood's organizational endeavors. Commencing in April 1937 the Brotherhood put into effect a program of monthly meetings in South Bend, Indiana, and commenced actively soliciting the membership of the respondent's employees.

The April 1937 meeting of the Brotherhood, which was held at a place in South Bend, Indiana, known as Falcon's hall, was widely advertised among the respondent's employees. Among those the Brotherhood invited to attend were Earl Livelsberger, the respondent's general line foreman for the South Bend, Indiana, division, and Glenn Carlton, his assistant. Neither Livelsberger nor Carlton was present in the hall when the meeting convened. During the course of the meeting Samuel Guy, the Brotherhood's business manager, was informed by several of the respondent's employees that Livelsberger and Carlton were sitting in a car outside the meeting hall. Guy left the hall and invited Livelsberger and Carlton to come to the meeting. Carlton declined, stating that he could find out about the meeting in the morning. The position of the car in which Livelsberger and Carlton were sitting was such that they could be seen by, and themselves observe, the employees who attended the Brotherhood meeting. The fact that Guy's attention was called to the presence of Livelsberger and Carlton indicates that the respondent's employees were aware of the supervisory surveillance of their meeting place. Moreover, Carlton testified that he saw four of his subordinate employees going into the meeting place and Livelsberger stated that he discovered none of his "associates" in attendance. Thus it is clear from the record that Livelserger and Carlton took note of the employees who attended the Brotherhood meeting. Although Livelsberger and Carlton were invited to the meeting and therefore their attendance at the meeting itself would not have discouraged membership in the Brotherhood, it is

clear and we find that their stationing themselves outside the meeting place was for the purpose of scrutinizing those who entered and thereby discouraging employees from attending such meetings. Since, as pointed out below, Livelsberger and Carlton are supervisory employees whose activities are attributable to the respondent, we find that the respondent, through the above-described conduct of Livelsberger and Carlton, interfered with, restrained, and coerced its employees in the exericse of the rights guaranteed in Section 7 of the Act.

Shortly after the April meeting Russel Harter, foreman of a transmission crew in the respondent's South Bend, Indiana, district, "kept drilling away" on the men in his crew for the purpose of learning the details of the Brotherhood meeting. Harter testified:

> . . . I inquired if there wasn't something they had on their minds that wasn't exactly as it should be . . . and one of them . . . mentioned about being uptown to this particular meeting. And I knew, or I had heard in a roundabout way that they had had a meeting up there . . . Well, I asked them if they was to that meeting. They denied even knowing of any meeting. Then I just kept drilling away on that same idea, that they had been to a meeting at Falcon Hall . . . I made believe I knew something that I didn't because I wanted to get the story out of them, and they finally told me that they had been to that meeting . . . I didn't know that the men had been to that meeting absolutely at all, but I started questioning them about who was the speaker at the meeting and everything of that kind, till I pinned them down to where they had to admit they was to the meeting . . . I asked how many was to the meeting and asked them the names of different ones that was there . . .

As is found hereinafter, Harter is a supervisory employee whose activities are attributable to the respondent. His conduct in questioning the men who work under him concerning their union activities clearly conveyed to the employees his hostility toward the Brotherhood.

We find that the respondent, through the above-described activities of Harter, interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.[5]

Through Harter's strenuous interrogation of the employees, he became cognizant of the nature and extent of the Brotherhood's membership campaign. In the midst of this period of unusual organizational activity among the respondent's employees, Foreman Harter decided to establish a labor organization unaffiliated with either the Brotherhood or the Committee for Industrial Organization, the unions which were then soliciting the employees. Harter conceived this idea during a conversation with a foreman from the Michigan Bell Telephone Company regarding an employees' association in existence in that company. This conversation occurred in Niles, Michigan, on May 14, 1937, shortly after the Brotherhood's activities were brought to Harter's attention in the manner described above. Although certain of the individuals summoned by Harter to assist him in his plan, which resulted in the establishment of the Association, contemplated the possibility of obtaining a wage increase through the channels of collective bargaining, the record discloses that the main consideration in the establishment of the Association was the desire to stifle the growth of unions with outside affiliations. As William La Velle, one of the foremen who helped create the Association, testified at the hearing:

> The older employees of this company own their own homes. This electric company, the Indiana and Michigan, is home for many of the old employees. We never needed a union at the Indiana and Michigan as long as I have ever been there, up to the last present years—the last 4 or 5 years—when the A. F. of L. and the C. I. O. got so strong and they was going to come in and take our little playhouse away from

[5] *Matter of The Boss Manufacturing Company and International Glove Workers' Union of America, Local No. 85*, 3 N. L. R. B. 400, enf'd as mod., *N. L. R. B. v. The Boss Manufacturing Company*, November 7, 1939 (C. C. A. 7).

us; then we organized the Michiana Electric Workers Association.

Having decided to form the Association, Harter lost no time in executing his plan. On May 15 Harter discussed his idea with La Velle, a line foreman in the respondent's South Bend, Indiana, district, and La Velle suggested a meeting at his home the following day. On the afternoon of May 15 Harter asked Ernest Clark and Clarence Daniels, who are also line foremen in the South Bend district, to come to La Velle's home on May 16.

On Sunday, May 16, these four foremen and Linemen Leo Ringen and Jack Betley, who also work in the South Bend district, met at La Velle's home. Ringen apparently came to the meeting without an invitation, but Betley had been asked to attend by La Velle.[6] The main topic of discussion among the group was the membership gains being made by "outside" unions in the vicinity of South Bend, and those present agreed to help carry out Harter's plan to establish a labor organization limited to the respondent's employees.

Each person present at La Velle's home contributed $1.00 for the printing of membership cards. La Velle then called on Frank Miles, the respondent's distribution engineer for the South Bend district, and persuaded him to help organize the Association. Together they located a printer who was able to make up 500 cards that afternoon. La Velle, Miles, and the printer prepared the cards, apparently choosing the name, "Michiana Electrical Workers Association"[7] which appeared on them. La Velle returned to his home, accompanied by Miles, where

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[6] On Saturday afternoon, May 15, Betley showed La Velle a paper he had prepared and was circulating among his fellow workers. The paper was entitled "SAFE" and read, in part, as follows:

> We, the older men in the employ of this company, believe that we have men among us that can intelligently arbitrate with the management without resorting to radicalism and dictation of outsiders. Our meeting will be posted in the near future.

La Velle told Betley to disregard whatever he had in mind and invited him to the meeting at his home the following day.

[7] The name of the Association was later changed to Michiana Electrical Utility Workers Association.

Harter, Clark, Daniels, Ringen, and Betley were waiting. He asked them to return about 5 o'clock to obtain the membership cards, and during the afternoon he requested 15 or 20 additional employees to call for cards and to help in the membership drive. That afternoon Clark invited Assistant General Line Foreman Carlton, who was already aware of the Brotherhood activity, to aid in the creation of the Association.

On Tuesday, May 18, Carlton discussed with F. M. Henderson, the respondent's transmission engineer and supervisor of right-of-way, the desirability of holding an organizational meeting in which representatives of the various departments of the respondent could participate. Henderson volunteered his home for the meeting, which was held on Wednesday, May 19, and attended by Henderson, Carlton, Taylor Edgell, acting general line foreman for the respondent's Michigan Division, Nelson Lambert, a right-of-way man in Henderson's department, Ray Collins, a condenser operator in Twin Branch, Michigan, and James Marsh, a Class A operator at the respondent's Elkhart, Indiana, hydro-electric plant. Betley approached Edgell regarding the Association on May 18, and asked him to send a representative from the Michigan division to the Henderson meeting on May 19. At noon on May 19 Edgell summoned about 15 or 20 employees to the respondent's garage in Benton Harbor, Michigan, and they selected him to act as their representative at the Henderson meeting. Lambert was invited to the May 19 meeting by Henderson, under whom he works. Collins was asked to attend as a representative of the Twin Branch employees by Jack Hanley, the watchman and custodian of the Twin Branch plant. Hanley was one of the men La Velle had asked on Sunday, May 16, to call for Association cards and to participate in the membership drive. Marsh was invited to the meeting by Carlton.

The Henderson group engaged an attorney, laid plans for a mass meeting of the respondent's employees, and prepared in rough draft a petition for recognition to be presented to the management. The attorney engaged was suggested to the group by Collins, who had been referred

to the attorney by one Duding, the general manager of the Indiana Bell Telephone Company. The mass meeting was scheduled for the following night, May 20, and the Henderson group selected George S. Holmes, the respondent's safety engineer, to preside. The petition drafted at the meeting was taken to the home of the attorney after the group parted and was revised by him.[8]

At the request of Henderson, Miles arranged for the May 20 mass meeting to be held in a place known as St. Joseph's auditorium in South Bend. Henderson also provided a stenographer, who attended the meeting and took the minutes. Having discovered that Holmes was out of town, Henderson, Collins, and Carlton asked Lambert to conduct the meeting and instructed him regarding procedure. Word of the meeting was spread among the employees by the Henderson group, and on Thursday evening about 600 employees appeared at St. Joseph's auditorium. Lambert opened the meeting by reading excerpts from the Act and taking a standing vote to see how many favored forming an unaffiliated organization. After a majority of those present had indicated their approval, Lambert asked the assembly to send a representative from each of the respondent's departments to the stage to sign the petition for recognition which had been prepared at Henderson's house. Twenty such representatives came forward, including Henderson, Edgell, and two crew foremen. The precise manner whereby these representa-

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[8] This petition, as revised by the attorney and signed at the May 20 meeting by individuals representing the various departments of the respondent, was addressed to English, the respondent's vice president and general manager, and provided as follows:

> You are hereby notified that a majority of the employees of the Indiana & Michigan Electric Company have organized a Union, to be known as the Michiana Electrical Utility Workers Association. At an open meeting of said Association held today, the undersigned were duly elected a Committee to petition you and through you the Company for the following purposes.
>
> We respectfully ask you, in behalf of the Company to recognize the Michiana Electrical Workers Association as the SOLE BARGAINING AGENT for the employees of said company.

tives were chosen is not clear in the record. Two of them[9] had apparently been selected prior to the May 20 meeting; as to some of the others, there is evidence that the men from the various departments sat together at the meeting and selected their representatives at the time Lambert called for them. Several persons were nominated to act as temporary chairman of the Association. Miles, however, moved that Holmes, who was not present at the meeting, be unanimously chosen chairman and his motion carried. The meeting adjourned with the understanding that Holmes would assume the leadership upon his return to South Bend.

The Association membership drive, launched on Sunday, May 16, by the La Velle group, culminated in 690 members by Thursday, May 20. In addition to giving cards to the persons who met at his home on May 16 and to the others he called on Sunday afternoon, La Velle mailed cards to numerous unknown persons for distribution throughout the respondent's utility system. Betley, equipped with Association cards and his paper, described above, laid off work 2 days for the purpose of obtaining members. We have already noted the activities of Foremen Harter, La Velle, Clark, and Daniels in procuring members for the Association. Other supervisory employees also participated in the membership campaign. These included Miles, Henderson, Edgell, and Crew Foremen Don Strock, C. Masten, Claude Hildebrand, and E. J. Miller. Carlton, who travels extensively in the vicinity of South Bend, Indiana, in connection with his duties as assistant general line foreman, collected 75 or 80 Association cards which had been signed by the employees and informed a great many about the May 20 meeting. Carlton also instructed Charles Havelin, a lineman, to solicit the membership of two active Brotherhood supporters who, according to Carlton, were "two pretty hard nuts to crack." Livelsberger, the respondent's general line foreman for the South Bend district, secured an

[9] Edgell was selected as the Benton Harbor, Michigan, representative on May 19; Durfey, an employee engaged in the respondent's tree-trimming work, was selected sometime before May 20.

Association card for a crew foreman under his supervision after the foreman had asked his advice about joining the Association. The Association records show that 45 supervisory employees joined the Association shortly after its formation.[10]

2. Structure and operation of the Association; the contract

On May 22 an Association committee composed of Carlton, Henderson, Marsh, and William Burke[11] presented the petition for recognition, together with a copy of the minutes of the May 20 meeting, to Charles B. Calvert, the respondent's assistant secretary. In response to Calvert's request for information about the Association, Marsh assured Calvert that the group which met at Henderson's house on May 19 was determined to follow the Golden Rule in organizing and administering the Association. Calvert replied that under those circumstances the Association need have no worry about having a contract signed. The committee reported to the Association that the management had promised its cooperation and had granted the Association unofficial recognition upon presentation of the petition.

Shortly after May 22 Holmes returned to South Bend and was informed of his selection as temporary chairman of the Association. Holmes asked the attorney about his duties and immediately assumed control and leadership. He wrote a tentative set of bylaws, which were revised by the attorney and a committee he appointed from the Association membership. The membership of the bylaw committee consisted of 14 employees from the various departments of the respondent, including Edgell, and Foremen Ross Lillard, Strock, O. E. Jefferson, Ed Johnson, and Ray Landan.[12]

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[10] The status of these employees is discussed below.

[11] Burke is a lighting salesman in the respondent's South Bend district.

[12] Lillard is the respondent's tree-trimming foreman, and Jefferson, Johnson, and Landan are foremen in South Bend, Indiana; Buchanan, Michigan; and Elkhart, Indiana, respectively.

During the meetings of the bylaw committee the question of eligibility for membership in the Association was discussed. The committee decided to "lean away from, rather than towards, including department heads, to be on the safe side." The eligibility of foremen for membership in the Association was specifically considered, the decision being that they should be allowed to join but "not take too active part in the organization so as to make men working under them feel that the union was run by higher-ups." The bylaws were read and adopted at a general Association meeting held on June 11.

The bylaws divide the Association membership into four groups, the South Bend Division, the Michigan Division, the Elkhart Division, and the Twin Branch Division. Each division has a Division Council which is composed of representatives selected from various Local Groups within the divisions.[13] The Division Councils, in turn, supply representatives to the General Council of the Association, which is empowered by the bylaws to call mass meetings of the Association membership, to negotiate with the respondent concerning wages, hours, and conditions of employment, and to make final disposition of grievances. Provision is made for the election of officers for the Local Groups, the Division Councils, and the General Council; for the holding of monthly meetings of Local Groups, Division Councils, and the General Council; and for dues, which are 25 cents a month. Membership in the Association is limited to employees of the respondent who were born in the United States or who have taken out first citizenship papers. Department heads, officials, and "agents" of the respondent are not eligible for membership in the Association. The record does not indicate the scope of the word "agents" as used in the bylaws.

Between June 11 and July 17 Association officers in the various divisions were elected at meetings presided over by several of the persons who had helped establish

[13] Each of the respondent's departments having five or more employees comprises a Local Group.

the Association. Holmes, whose headquarters are in South Bend, Indiana, conducted the meeting for the Michigan Division in Benton Harbor, Michigan; Lambert officiated in the South Bend Division at South Bend, Indiana; Collins conducted the Twin Branch Division meeting at Twin Branch, Michigan; and Henderson went from South Bend to Elkhart, Indiana, to conduct the Elkhart Division meeting. These elections placed Edgell in the office of president of the Michigan Division; R. E. Denman, a meter foreman, became president of the Elkhart Division; H. Whittmack, a shop foreman, was elected vice president of the Twin Branch Division; and Collins, whose participation in the Association can be traced to Foreman La Velle, was chosen treasurer of that division. Although no supervisory employees held offices in the South Bend Division in 1937, the 1938 South Bend officers included Miles, Clark, and Daniels. On June 24, 1937, the general council of the Association elected Holmes president, Edgell vice president, Denman secretary, and Collins treasurer. These officers, with the exception of Denman, were reelected to their posts in 1938.

On June 16, 1937, Holmes, on behalf of the Association, delivered a proposed working agreement to the respondent. The agreement was prepared mainly by Holmes, with some aid from the General Council officers and the Association attorney. On August 3, the General Council officers met with Thomas F. English, the respondent's vice president and general manager, and Calvert, the respondent's assistant secretary, to discuss the proposed working agreement. Calvert opened the negotiatons with the statement that the respondent had been petitioned for recognition by another group[14] and suggested to the Association representatives that they discuss with their attorney the advisability of holding an election to establish the majority designation of the Association. Calvert also requested a copy of the Association bylaws as a condition precedent to any negotiations on the working agreement.

[14] On May 24, 1937, a C. I. O. committee requested recognition from the respondent.

English then suggested that the bylaws should graphically set up the organization of the Association, whereupon Calvert commented that "the bylaws, if they have not been changed, are set up that way."

Following Calvert's suggestion that the Association establish its majority status by an election, Holmes wrote the Indiana State Labor Relations Board, at Indianapolis, Indiana, on August 3, requesting an election. The State Board referred him to the National Labor Relations Board. Holmes wrote to the Board's Chicago office and on August 24 sent the Board certain information about the Association. On September 28, 1937, the Board, in response to an urgent inquiry from Holmes regarding the election requested by the Association, informed Holmes by letter that the Association was under investigation and that no information regarding its status could be released.[15]

On the day the above letter was received, the Association wrote the respondent requesting a meeting on October 1 for the purpose of considering the proposed agreement. Accompanying this letter was an affidavit stating that the Association represented 750 of the respondent's employees. Also on that day the respondent acknowledged receipt of the Association's letter, formally recognized the Association as sole bargaining agent for its employees, and agreed to meet with Association representatives on October 1, as requested.

The October 1 meeting, at which Calvert represented the management, was devoted to a reading and discussion of the proposed agreement submitted by Holmes on June 16. Calvert commented that many of the proposals contained therein were already in effect. Toward the end of the conference, Calvert summed up the discussion by saying:

> . . . Generally speaking, your working conditions are satisfactory to the employees . . . There is noth-

[15] This communication, which is in evidence, is captioned XIII-C-418. In that case United Electric Radio Workers of America, Local 906, C. I. O., filed charges on July 20, 1937, with the Regional Director for the Thirteenth Region alleging that the respondent had violated Section 8(1) and (2) of the Act.

> ing particularly abhorrent on account of working conditions . . . There may be adjustments which we will have to consider but, in general, the question is going to boil itself down to a question of wages and salaries.

Although the Association had proposed a 15-per cent wage increase, Calvert declined to discuss wages, stating that consideration of that matter should be postponed until English could be present. Holmes then pointed out that "if negotiations are allowed to drag indeterminately, it will contribute to more dissatisfaction arising among the men." The meeting adjourned after Collins remarked to Calvert, "It might be surprising to you to know that a lot of men (are) much more favorable to other organizations. If no action is received, it (the Association) will be a flop."

Without further discussion of the wage increase proposed by the Association, the respondent, on October 18, offered to the Association a blanket increase of 5 cents per hour, effective November 1. Holmes discussed the offer at a meeting of the South Bend Division; Edgell brought it to the Michigan Division; Denman informed the Elkhart Division of the respondent's proposal; in the Twin Branch Division Collins "fluently offered a great number of citations and comparisons as to why the company management would not agree" with the 15 per cent increase proposed by the Association. On October 29, after the four divisions of the Association had voted in favor of the 5-cent increase, the Association accepted the respondent's offer. Holmes testified that the 5-cent increase granted was, in the main, considerably less than the increase proposed by the Association.

Negotiations between the Association and the respondent continued during November and December. Early in December the respondent submitted a Declaration of Policy to the Association. The Declaration contained no reference to wages or salaries but in other respects it did not differ materially from the working agreement originally proposed by the Association. The Association was re-

luctant to accept the Declaration of Policy and after further negotiations the respondent agreed to execute a contract with the Association covering working conditions, which was done on February 5, 1938. The contract is substantially the same document as the Declaration of Policy previously submitted. On March 1 the respondent submitted to the Association a classification of employees which the Association had requested, and after the classification was accepted by the Association on March 22, 1938, it was incorporated in the written contract.

During the life of the contract, the Association presented to, and discussed with, the respondent a number of grievances. Many of these grievances were handled on behalf of the employees by supervisory employees, particularly Safety Engineer Holmes and Foreman Lillard. Supervisory employees of the respondent also actively engaged in the collection of Association dues. Among them were Acting General Line Foreman Edgell, Foremen Lillard, Daniels, Miller, Thornton, and Strock, and C. E. Knepp, the chief distribution clerk for the transmission and distribution department.

3. The respondent's responsibility for the activities of supervisory employees

Since, as revealed by the facts set forth above, many of the respondent's supervisory employees participated in the establishment and administration of the Association, and since the respondent insists that the activities of these individuals are not binding on it, we shall consider the administrative structure of the respondent's utility system. The system is divided into eight departments at the head of each of which is a superintendent. The system is also divided into three divisions, each under a division manager, and for some purposes into five districts, each under a district manager. The administration of the respondent's business is conducted by a hierarchy of supervisory employees, headed by *Thomas F. English*, the respondent's vice president and general manager, and *Charles B. Calvert*, the respondent's assistant secretary.

The transmission and distribution department, in which 352 persons are employed, is the largest department in the system. Its superintendent, *G. F. Dequine*, is directly responsible to English and Calvert. Under Dequine there are 44 persons of supervisory rank. Of this number, 32 joined the Association and 25 were outstandingly active in its establishment and administration. In addition, 13 supervisors employed in various other of the respondent's departments joined and assisted the Association. We shall now discuss the functions of these supervisory employees who participated in the activities of the Association.

ENGINEERS. *F. M. Henderson*, who joined and was active in the rapid organization of the Association, is the respondent's transmission or design engineer. He works directly under Dequine, thereby holding a position fourth in line of authority from English, and is the only person in the respondent's employ who is engaged in transmission or design engineering. Dequine supplies Henderson with requisitions for the construction of lines, and Henderson's function is to make plans and cost estimates for the construction under consideration. When Henderson's plans and estimates meet with Dequine's approval, Henderson is responsible for going forward with the construction of the work he has designed. Thus, he inspects the work as it progresses to insure compliance with the plans and specifications and approves the job when it is finally completed. In the performance of these duties Henderson is assisted by three engineers who work exclusively at his direction. At the time of the hearing Henderson and his engineers were principally engaged in planning the construction of a number of rural distribution lines. In connection with this particular task Henderson is assisted by four or five right-of-way men who, at his direction, obtain easements from farmers over whose land the rural lines are being built. He also directs the work of a staking or surveying crew of four men who build the lines according to the plans and specifications Henderson and his engineers have made. Hen-

derson has an engineering degree from the Iowa State College and receives a monthly salary of $243.50.

The respondent's distribution engineering for the entire system is handled by five district engineers whose work is coordinated by a principal system distribution engineer at the direction of Dequine. Four of these district engineers, namely *John Stoudt, Emmett Thomas, Ward Wright, and Frank Miles,* joined the Association, and one of them, *Miles,* was active in its affairs. Miles makes plans and sketches, draws up bills of materials and works out cost estimates for the construction and maintenance of distribution lines and street-light circuits in the vicinity of South Bend. As is pointed out below, on occasions he assists in the duties of general line foreman for the South Bend Division. Miles supervises the work of four engineers in South Bend. The other distribution engineers perform functions similar to those of Miles. A personnel chart prepared by the respondent shows that the four other distribution engineers, including Stoudt, Thomas, and Wright, collectively supervise the work of nine engineers and three draftsmen.

George S. Holmes, the acknowledged leader of the Association after its formation, is the respondent's safety engineer, in charge of inspecting the employees engaged in line work for the purpose of enforcing the respondent's safety rules. His position is fourth in line of authority from English, and he is the only person in the respondent's employ whose time is devoted exclusively to these functions. He has authority to report violations of safety rules to foremen and general line foremen, which violations, under the contract between the respondent and the Association, provide immediate cause for discharge. Holmes customarily represents the respondent in safety matters at the National Safety Congress, the last meeting of which he attended in Chicago, Illinois, in October 1938. The respondent pays him a monthly salary of $208.50.

E. P. Kreimer, who joined the Association, is the electrical engineer for the transmission and distribution department, in charge of records and reproduction work.

Dequine ascribed to Kreimer the tasks of preserving the department's property, material, and line records, and developing information received from the engineers in the department into working drawings suitable to submit to the crews engaged in construction work. Kreimer supervises the work of 5 draftsmen, 14 persons who work on property records, and 3 persons who are engaged in reproduction work.

Milton C. Zumpe, the respondent's valuation engineer, also joined the Association. He supervises the work of 35 employees and is directly responsible to English.

Thus, the respondent's engineers are highly trained employees to whom the respondent entrusts important functions in the administration of its utility system. These engineers, with the exception of Holmes, assign work to, and direct the work of, subordinate employees. Although Holmes does not assign work to employees, he inspects their work for the purpose of enforcing the respondent's safety rules and reporting violations of such rules. As noted above, his reports may provoke immediate discharge.

FOREMEN. In each of the three divisions the construction and maintenance work on the respondent's transmission and distribution lines is supervised and coordinated by general line foremen and their assistants. In the South Bend Division the general line foreman, under whom there are 88 employees, is *Earl Livelsberger.* Livelsberger assisted the Association by furnishing R. L. Hoblitzel, a crew foreman under his direction, with an Association card when Hoblitzel inquired as to whether he should join the Association. The assistant general line foreman in the South Bend Division is *Glenn Carlton,* one of the most active participants in the establishment and administration of the Association. Although Carlton is technically under the direction of Livelsberger, in practice he works more as a partner of than as a subordinate to Livelsberger. Carlton assigns work to, and supervises the work of, the transmission crew foremen and their crews in the South Bend Division, while Livelsberger handles the distribution end. Carlton has supervision over 4 crew foremen, who direct the work of 13 linemen, 2

groundmen, 2 carpenters, and 3 truck drivers. In addition to the transmission crew foremen who are under Carlton, *Lillard*, the foreman in charge of the tree-trimming work for the entire system with supervision over the 13 employees engaged in such work, reports to Carlton. When Livelsberger is ill or on vacation, Carlton acts as general line foreman in charge of the transmission and distribution work for the entire South Bend Division, and is assisted at such times by Miles, the distribution engineer for the South Bend district.

In the Benton Harbor or Michigan Division, *Taylor Edgell*, also an early and active participant in the Association, is the respondent's acting general line foreman, directly responsible to the division manager.[16] His duties are similar to Carlton's. He assigns work to, and checks the work of, the 5 foremen and their crews of approximately 25 men in the Benton Harbor Division. Among his many duties is the apportioning of overtime work among the crews, which work is apparently very much sought after by the employees.

The duties of general line foreman in the Elkhart Division are performed by *E. Brubaker*.[17] Brubaker joined the Association early in its existence.

The actual construction and maintenance work in the respondent's utility system is performed by crews of workers under the direction of crew foremen. These crews, of which there are 20 in the transmission and distribution department, are built around the crew foremen and vary in number from 2 to 10 men, depending on the size of each job and its importance. The crew foremen, 31 of whom joined and otherwise participated in the Association,[18] are for the most part old employees, the young-

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[16] McKinder, the general line foreman for the Michigan Division, became ill in the spring of 1937. Edgell, who before that time had been a line foreman, was assigned McKinder's duties and at the date of the hearing was still performing them. This promotion occurred prior to the formation of the Association.

[17] His title appears to be district distribution superintendent.

[18] These foremen are *Russel Harter, William La Velle, Ernest Clark, Clarence Daniels, Don Strock, C. Masten, Claude Hildebrand, O. E. Jefferson, E. L. Johnson, Ray Landan, Ross Lillard, M. Wittmack,*

est in point of service having been a foreman about 4 years and many of them having held their positions more than 15 years. Crew foremen receive assignments of work and instruction from supervisory employees of higher rank, and are held responsible for executing their assignments in accordance with the instructions given them. They have complete authority over the day-by-day work of the men in their crews, having the right to determine the manner and speed of work; to maintain discipline and efficiency in their crews; to report misconduct or inefficient work to higher supervisors, including department superintendents;[19] to recommend advancements;[20] to assign overtime work in some instances;[21] and to interpret and require compliance with the respondent's safety rules. *Virgil McClure*, a crew foreman responsible to the superintendent of the sub-station department and a member of the Association, customarily participates in the hiring of new employees. When he is in need of more men, he searches out a satisfactory applicant and clears his choice through his superintendent who, in turn, recommends the applicant to English for formal appointment. On many occasions McClure's superintendent does not interview or recommend the applicant until McClure has put him to work. *Ross Lillard*, who had for many years been engaged by a tree-trimming contractor in Indiana, was employed by the respondent when the respondent

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E. J. Miller, Henry Thornton, O. E. Smith, Ed. G. Brewer, Robert Chambers, George Thibideau, Al Snyder, Fred Rikert, C. F. Rayhorn, Charles Myers, M. E. Mowery, J. H. Mortimore, Ben Lossee, Ray Humberger, Deo Howe, R. L. Hoblitzel, Jack Hanley, Virgil McClure, and *R. E. Denman*. Of these 18 are crew foremen in the transmission and distribution department; the others are crew foremen in various other departments. Denman is included in this group although he holds the title of meter superintendent since Dequine testified that his duties, involving the supervision of three or four meter testers, render him a meter foreman in the Elkhart, Indiana, district.

[19] Thus, Crew Foreman Miller secured the transfer of an employee to another crew as a disciplinary measure by reporting to General Line Foreman Livelsberger and Assistant General Line Foreman Carlton.

[20] One of the demands made by the Association in negotiating with the respondent was that the recommendations for advancement made by crew foremen be reviewed by persons of higher rank.

[21] Crew Foreman Strock apportions the overtime work in his crew.

first undertook to do its own tree-trimming work. He organized this branch of the respondent's business and, subject to some assistance from Carlton, has been responsible for the tree-trimming work for the entire system since his employment, with supervision over 13 employees. Although crew foremen, like the men under them, are hourly paid employees, they receive at least 15 cents an hour more which on a monthly basis would give them a salary of about $25 more than the men who work under them.

The crucial importance of crew foremen in the respondent's operations and labor relations was aptly described at the hearing by Dequine, the superintendent of the transmission and distribution department, who testified that it takes at least 4 years to train a man to this position and that a crew foreman

> had to have a lot of qualifications. He has to be able to handle men, and I think probably a library is written on this subject. And that's a qualification that is probably one of the hardest to fill. He has to be able to maintain peace within the crews because you cannot accomplish sufficient work if you have unrest in the crew or if you have one man against the other, or that kind of thing. He has to be able to promote harmony. He has to be thoroughly sold on safety work. He must understand at the time that he is on the crew, during working hours, he is handling the company's cash register, and he must handle that efficiently. He is spending the company's time, money and material. . . . He is your key man. He is the success or failure of your organization.

Thus, Livelsberger, Carlton, Edgell, and Brubaker supervise and coordinate the construction and maintenance of the respondent's transmission and distribution lines in the respondent's three divisions of operation. They assign work to, and direct the work of, the crew foremen who are employed in their respective divisions. The crew foremen in turn assign work to, and direct the work of, the crews of workers and they are the key em-

ployees on whom the respondent relies for the "success or failure" of its personnel policies.

OTHER SUPERVISORY EMPLOYEES. The following individuals of supervisory rank also joined and otherwise assisted the Association: *C. E. Knepp*, the chief distribution clerk for the transmission and distribution department, who handles the timekeeping and the general paper work for the department, supervising, and assigning work to 9 assistants; *John Webb*, the chief inspector for the transmission and distribution department, who directs the work of 7 assistant and district inspectors; *R. J. Brown*, the assistant service superintendent for the transmission and distribution department, with authority over 13 persons who do service and complaint work; *Melville Hartley*, the assistant general meter superintendent for the transmission and distribution department, who, together with the general meter superintendent, supervises the 35 employees engaged in various types of meter work.

Thus, the above-named employees perform significant supervisory functions in the respondent's system, assign work to, and direct the work of, subordinate employees.

The respondent contends that these supervisory employees do not represent management because they do not have authority to hire and discharge. That the employer is responsible for the acts of certain employees may, however, be shown in other ways.[22]

The record compels the conclusion that the supervisory employees dealt with in this section are management representatives. They assign and direct work, maintain discipline and efficiency, and in general supervise the em-

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[22] *International Association of Machinists, Tool and Die Makers Lodge No. 35, etc.* v. *National Labor Relations Board*, decided Nov. 20, 1939 (C. A. for D. C.) enf'g *Matter of The Serrick Corporation* and *International Union, United Automobile Workers of America, Local 459*, 8 N. L. B. B. 621; *National Labor Relations Board* v. *American Manufacturing Company*, 106 F. (2d) 61 (C. C. A. 2), enf'g *Matter of American Manufacturing Company et al*, and *Textile Workers Organizing Committee*, 5 N. L. R. B. 443; *Virginia Ferry Corporation* v. *National Labor Relations Board*, 101 F. (2d) 103 (C. C. A. 3), enf'g as mod., *Matter of Virginia Ferry Corporation* and *Masters, Mates and Pilots of America, No. 9, et al.*, 8 N. L. R. B. 730. For example, although the department heads do not have authority to hire and discharge, the respondent concedes responsibility for their acts.

ployees under them. Several are themselves superior to other supervisory employees or otherwise high in the respondent's administrative hierarchy. Foremen possess the potent power of determining and making recommendations concerning individual merit for purposes of advancement, transfer, and discipline. The fair inference from the nature of the duties of the supervisory employees considered in this section but not designated foremen is that they too make similar recommendations. In practice Foreman McClure hires persons for his crew, although the formal authority is lodged elsewhere. Crew foremen, in immediate authority over the employees, are concededly "key men" in the respondent's organization. Under the contract between the respondent and the Association, as well as under the Association bylaws, it appears that the Association presents employee grievances to the respondent's foremen in the first instance. Under these circumstances, and especially in view of the concerted action of these supervisory employees in establishing and maintaining the Association, it would be unrealistic to assume that they were not acting in their capacity of representatives of management in thus forming, joining, leading, soliciting for, and otherwise assisting the Association.

It is true, as the respondent points out, that supervisory employees are eligible for membership in the Brotherhood and the Association. This does not demonstrate, however, that the respondent's supervisory employees relinquished their identification with management by participation in the Association. They, in fact, were largely responsible for the formulation of the bylaws which made them eligible for membership in the Association. By the same logic, the president of an employer could have himself elected president of a labor organization and argue that the organization was lawful under the Act because the bylaws permitted him to hold both offices. As we stated in *Matter of West Oregon Lumber Company*:[23]

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[23] *Matter of West Oregon Lumber Company* and *Lumber & Sawmill Workers Local Union No. 3*, 20 N. L. R. B., No. 1.

> . . . union rules cannot sanction management interference, restraint and coercion. The Act was directed against interference by management with the exercise by employees of the rights guaranteed in Section 7. Since by Section 1 of the Act it is the policy of the United States to protect commerce through the guarantees in Section 7, and through the prohibitions in Section 8, those guarantees and those prohibitions cannot be set aside by the rules of private organizations.

In *Matter of Tennessee Copper Company*,[24] we answered a similar contention as follows:

> Membership of supervisory employees in a labor organization involved in a controversy over representation cannot confer on such employees a privilege to interfere, nor can the immunity guaranteed employees by the Act be impaired or diminished by the membership rules of any labor organization. The employees' right to a choice free from employer interference is absolute. Supervisory employees, although eligible for membership in competing labor organizations, are forbidden by the Act, in their capacity as the employer's agents, to interfere in the selection of employee bargaining representatives . . .

We find that the engineers, foremen, and other supervisory employee considered in this section are representatives of management and that their activities in connection with the Association are attributable to the respondent.

4. Concluding findings

Management representatives formed the Association. Of the 13 employees primarily responsible for its establishment, 8 were supervisory employees, namely, Crew Foremen Harter, La Velle, Clark, Daniels, Assistant Gen-

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[24] *Matter of Tennessee Copper Company* and *Textile Workers Organizing Committee*, 9 N. L. R. B. 118. See also *Matter of Ward Baking Company* and *Committee for Industrial Organization*, 8 N. L. R. B. 558.

eral Line Foreman Carlton, Acting General Line Foreman Edgell, Transmission Engineer Henderson, and Distribution Engineer Miles. Four of the remaining five organizers, namely Betley, Lambert, Collins, and Marsh, were persons brought into the movement by supervisors.

The avowed purpose of the supervisory employees in organizing the Association was to forestall the growth of labor organizations with outside affiliations.

Management representatives pervaded the leadership of the Association. Thus, of the four persons serving on the committee which obtained recognition for the Association from the respondent even before officers were elected, two were supervisory employees: Transmission Engineer Henderson and Assistant General Line Foreman Carlton; and a third, Marsh, joined the Association at the invitation of Carlton. Safety Engineer Holmes acted as temporary chairman and drafted the bylaws and bargaining proposals. The elections for officers of the Association were conducted under the auspices of Holmes and Henderson. Holmes was elected president. Acting General Line Foreman Edgell and Meter Foreman Denman became vice president and secretary, respectively. Collins, who became treasurer, participated in the creation of the Association at the instance of a supervisory employee. These four officers composed the governing body, called the General Council, of the Association.

The respondent was well represented on both sides of the bargaining table. We have noted that Safety Engineer Holmes drafted the bargaining proposals for the Association. The General Council, dominated by supervisory employees, represented the Association in bargaining with the respondent. Moreover, the respondent's foremen not only handled grievances for the Association, but also were authorized by the contract and the Association bylaws to represent the respondent in the first step of the grievance procedure. There could be no arm's length bargaining under these circumstances.

The negotiations between the Association and the respondent indicate the unlawful relationship obtaining between them. Thus, the General Council of the Association

appealed to the respondent during the negotiations to make some concessions on the ground that otherwise the Association would be a "flop." Thereafter, without discussion of a prior wage demand of the Association and long before a bargaining contract was executed, the respondent offered and granted the employees, through the Association, a 5-cent wage increase. It appears and we find that the respondent's purpose in granting the increase was to prevent the Association from losing its members. As such it was unlawful support.[25] The type of appeal by the Association as well as the respondent's response thereto suggest that the Association was not independent of the respondent.

Finally, management representatives solicited memberships for the Association, collected dues, handled grievances on its behalf, and became members themselves in significant numbers.

The respondent relies on the fact that the Association secured benefits for its members. But this is immaterial under the Act if the respondent has in fact interfered with, supported, and dominated the Association.[26] That the Association secured benefits does not prove that it was free from the interference, support, and domination of the respondent. This success under the circumstances presented here is at least as consistent with the contrary conclusion.

In short, management representatives coerced employees in regard to membership in the Brotherhood, and, in order to frustrate it and other outside organizations, formed, nourished, and led the Association.

We find that the respondent has dominated and interfered with the formation and administration of the Asso-

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[25] Compare *National Labor Relations Board* v. *American Potash and Chemical Company, et al.*, 98 F. (2d) 488 (C. C. A. 9).

[26] *National Labor Relations Board* v. *Newport News Shipbuilding and Drydock Company*, decided December 4, 1939 (U. S. Sup. Ct.), reversing and remanding *National Labor Relations Board* v. *Newport News Shipbuilding & Drydock Company*, 101 F. (2d) 841 (C. C. A. 4). See also *Virginia Ferry Corporation* v. *National Labor Relations Board*, 101 F. (2d) 103 (C. C. A. 4), enf'g as mod. *Matter of Virginia Ferry Corporation and Masters, Mates and Pilots of America, No. 9, et al.*, 8 N. L. R. B. 730.

ciation, and has contributed support to it, and has thereby interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

B. The Alleged Discrimination

The complaint alleges, and the answer denies, that the respondent discharged Forrest Elkins on December 24, 1937, because of his activities in behalf of the Brotherhood. The Trial Examiner found that Elkins had not been discharged for union activities, and we concur in his finding. Since the Brotherhood did not take exception to the Trial Examiner's recommendations we will not set forth the evidence with respect to Elkins' case in further detail.

We find that the respondent has not discriminated with regard to the hire and tenure of employment of Forrest Elkins.

The Trial Examiner found that the respondent interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in the Act by transferring Earl Freeman from a crew on which he was regularly employed to another crew, with a resultant loss in overtime work, because of his support of the Brotherhood.

Freeman joined the Brotherhood in September, 1937. He also solicited the membership of a fellow employee during the noon hour and because of such solicitation he became involved in a heated exchange of words with Carlton, assistant general line foreman. The testimony is in conflict as to whether this incident occurred before or after the date of Freeman's transfer.

On October 4, 1937, because Freeman was performing his work in a "grouchy," "bull-headed," and "pouty" way, Crew Foreman Miller requested that Freeman be transferred to another crew. Pursuant to this request, it appears that Carlton and Livelsberger, general line foremen, arranged his transfer. Freeman conceded that Miller was a fair and reasonable person. Although Miller was active on behalf of the Association, he did not know

of Freeman's membership in the Brotherhood or of the clash between Freeman and Carlton.

Under these circumstances, we do not find that Freeman's transfer on October 4, 1937, was the result of his support of the Brotherhood.

IV. *The effect of the unfair labor practices upon commerce*

We find that the activities of the respondent set forth in Section III above, occurring in connection with the operations of the respondent described in Section I above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. *The remedy*

Having found that the respondent has engaged in certain unfair labor practices, we will order it to cease and desist therefrom and to take certain affirmative action which we find is necessary to effectuate the policies of the Act.

We have found that the respondent has dominated and interfered with the formation and administration of the Association and has contributed support to it. Its continued existence is a consequence of violation of the Act thwarting the purposes of the Act and rendering ineffective a mere order to cease the unfair labor practices. In order to effectuate the policies of the Act and free the employees of the respondent from such domination and interference and the effects thereof, which constitute a continuing obstacle to the exercise by the employees of the rights guaranteed them by the Act, we will order the respondent to withdraw all recognition from the Association as representative of the respondent's employees for the purpose of dealing with the respondent concerning grievances, labor disputes, wages, rates of pay, hours of employment, and conditions of work, and to disestablish

it as such representative.[27] Since the agreement between the respondent and the Association embodies recognition of the Association as such representative, since further the agreement represents the fruit of the respondent's unfair labor practices, and a device to perpetuate their effects, we will order the respondent specifically to cease and desist from giving effect to this or any other agreement it may have entered into with the Association in respect to rates of pay, wages, hours of employment, or other conditions of work. Further, specifically ordering the respondent to cease and desist from giving effect to the agreement with the Association follows from our more general order with respect to withdrawal of recognition and disestablishment, hereinabove described.[28] The more specific order is the "relief . . . adapted to the situation which calls for redress."[29]

We have found that the respondent did not discriminate against Forrest Elkins in regard to his hire and tenure of employment. We shall, therefore, dismiss the complaint with respect to him.

Upon the basis of the foregoing findings of fact, and upon the entire record in this case, the Board makes the following:

Conclusions of Law

1. International Brotherhood of Electrical Workers, Local B-9, and Michiana Electrical Utility Workers Association, are labor organizations within the meaning of Section 2 (5) of the Act.

2. By dominating and interfering with the formation and administration of, and by contributing support to, Michiana Electrical Utility Workers Association, the respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (2) of the Act.

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[27] *National Labor Relations Board* v. *Pennsylvania Greyhound Lines*, 303 U. S. 261; *National Labor Relations Board* v. *Pacific Greyhound Lines*, 303 U. S. 272; *National Labor Relations Board* v. *Stackpole Carbon Company*, 105 F. (2d) 87 (C. C. A. 3).

[28] See *Matter of The Dow Chemical Company and United Mine Workers of America District No. 50*, 13 N. L. R. B. 104.

[29] See *Clover Fork Coal Company* v. *National Labor Relations Board*, 97 F. (2d) 331 (C. C. A. 6).

3. By interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, the respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (1) of the Act.

4. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2 (6) and (7) of the Act.

5. By discharging Forrest Elkins the respondent has not engaged in unfair labor practices within the meaning of the Act.

ORDER

Upon the basis of the above findings of fact and conclusions of law, and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondent, Indiana & Michigan Electric Company, and its officers, agents, successors, and assigns shall:

1. Cease and desist from:

(a) In any manner dominating or interfering with the administration of the Michiana Electrical Utility Workers Association, or the formation or administration of any other labor organization of its employees, and contributing any support to Michiana Electrical Utility Workers Association or to any other labor organization of its employees;

(b) Recognizing Michiana Electrical Utility Workers Association as the representative of any of its employees for the purpose of dealing with the respondent concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work;

(c) Giving effect to any agreement which it may have entered into with Michiana Electrical Utility Workers Association in respect to rates of pay, wages, hours of employment, or other conditions of work;

(d) In any other manner interfering with, restraining, or coercing its employees in the exercise of their rights to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives

of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the National Labor Relations Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Withdraw all recognition from Michiana Electrical Utility Workers Association as the representative of any of its employees for the purpose of dealing with the respondent concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work, and completely disestablish Michiana Electrical Utility Workers Association as such representative;

(b) Post immediately and in conspicuous places in each operating division of the respondent's utility system, and maintain for a period of at least sixty (60) days, notices stating: (1) that the respondent will cease and desist as provided in paragraphs 1 (a), (b), (c), and (d) of this Order; (2) that the respondent withdraws all recognition from Michiana Electrical Utility Workers Association, as representative of any of its employees, completely disestablishes it as such representative, and gives no further effect to any agreement with said Association in respect to rates of pay, wages, hours of employment, or other conditions of work;

(c) Notify the Regional Director for the Thirteenth Region in writing, within ten (10) days from the date of this Order, what steps the respondent has taken to comply herewith.

AND IT IS FURTHER ORDERED that the complaint be, and it hereby is, dismissed in so far as it alleges that the respondent has engaged in unfair labor practices with regard to Forrest Elkins.

Signed at Washington, D. C., this 28th day of February, 1940.

J. WARREN MADDEN, *Chairman*,
EDWIN S. SMITH, *Member*,
WM. M. LEISERSON, *Member*,
National Labor Relations Board.

(SEAL)

TRANSCRIPT OF EVIDENCE

BEFORE THE

NATIONAL LABOR RELATIONS BOARD,

THIRTEENTH REGION

1*

In the Matter of:

INDIANA & MICHIGAN ELECTRIC COMPANY,
and
INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL B-9.

Case No. XIII-C-685

Federal Courtroom,
Federal Building,
South Bend, Indiana,
Monday, November 28th, 1938

The above entitled matter came on for hearing, pursuant to notice, at 10:00 o'clock A. M.

Before: TILFORD E. DUDLEY, Trial Examiner.

APPEARANCES:

Stephen M. Reynolds, Attorney, appearing on behalf of the National Labor Relations Board.

Messrs. Seebirt, Oare & Deahl, by *Eli F. Seebirt,* and *Orlo R. Deahl,* South Bend, Indiana, appearing for the Indiana & Michigan Electric Company, Respondent.

Samuel Guy, 130 North Wells Street, Chicago, Illinois, appearing for Local No. B-9, International Brotherhood of Electrical Workers.

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11 Trial Examiner Dudley: Now, is there any objection to the admission into evidence of these exhibits? There being no objection—

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*Inset numbers appearing at outer edge of text indicate page numbers of original stenographic transcript of testimony.

Mr. Seebirt: Well, our only objection to the receipt of this complaint is that it abounds in nothing but conclusions and it brings to the respondent no information whatsoever as to the charges that the respondent is required to meet at the time of this hearing.

Trial Examiner Dudley: Well, Mr. Seebirt, at this time we have just the question as to whether we shall admit it into evidence, that is, as being the complaint that was served upon you.

Mr. Seebirt: No, there is no question about that, but just so that we may not waive anything here, we are objecting at this time to the complaint.

Trial Examiner Dudley: Yes. Well, apparently, there being no objection to the receipt into evidence of the complaint, along with the other exhibits, I will admit Board's Exhibits 1-A through 1-G, as offered.

Mr. Seebirt: Well, I want to make my motion plain, if the Examiner please, that the objection is to the admission of the complaint for any purpose, because it is so uncertain and indefinite that we are wholly unable to determine what we are to meet.

Trial Examiner Dudley: Well, this is the complaint that was served on you.

12 Mr. Seebirt: Yes, it is.

Trial Examiner Dudley: Well, then I will admit it. Otherwise, you see, I don't know what was served on you, I have no record of the pleadings.

Mr. Reynolds: All of the exhibits are then admitted?

Trial Examiner Dudley: All of the exhibits offered are admitted.

(The documents above referred to were thereupon marked "Board's Exhibits Nos. 1-A to 1-G", inclusve, and were received in evidence.)

Trial Examiner Dudley: Mr. Reynolds, do you have any other exhibits which contain pleadings?

Mr. Reynolds: The only other exhibit I have to offer presently is the stipulation on the facts of the business, but that will perhaps come after any motions which counsel have.

Trial Examiner Dudley: Yes, I would rather take that up later. May I ask the reporter to give me the exhibits?

(The exhibits referred to were handed to the Trial Examiner.)

Trial Examiner Dudley: I will now announce a five minutes recess while I study these pleadings and particularly, the respondent's motions.

(A short recess was taken.)

Trial Examiner Dudley: I call the hearing to order.

I note that the respondent has attached to the
13 motion to make the complaint more specific a memorandum which I assume contains respondent's arguments on behalf of the motion. Do you have any other arguments you wish to make?

Mr. Deahl: No, I think not. I think that states our position quite clearly.

Trial Examiner Dudley: I understand the position, but I have gone over the complaint carefully and also your answer to the complaint. It seems to me that the complaint is sufficiently specific in stating the basis of the charges and stating what the charges are against the company. I realize, of course, that you can't tell from that what the evidence is that the government or the union intend to bring into this hearing to support this complaint. Of course, I don't know what the evidence is either. I believe, however, that the charges are certainly specific enough to allow you to proceed.

Now, as the government unfolds its case, you will, of course, learn the names of the people and the witnesses and the specific instances that are the basis of the charge. Then after that you will be putting in your own evidence in answer to whatever the government brings up.

Mr. Deahl: May I make just an observation in connection with that? You will note that for the most part our motion to make more definite and certain proceeds upon the theory that the complaint leaves us without any means of knowing or anticipating, not what the evidence is going to be particularly, but who it is that is
14 going to testify and also the time that these things

are supposed to have taken place and where they took place. So we are left entirely without any means of investigating the basis for these charges. In other words, we are supposed to have initiated and promoted this association, and so forth. Well, now, about the only way that we could get any idea at all as to what evidence may be introduced here to support that charge would be to go out and canvass the employees of the Indiana & Michigan Electric Company.

Trial Examiner Dudley: I noted that suggestion in your memorandum.

Mr. Deahl: Well, now, it places us in this position, and, frankly, it is the truth, it is the fact, we haven't scarcely any idea as to what evidence is to be submitted here and as to who is going to testify, and it means that it will be necessary for us, after these witnesses take the stand and testify, to then start an investigation to ascertain what the facts may be from our standpoint, and to present what evidence may be available here for our defense.

Now, I make that observation for this reason, that we can, I think, fairly anticipate that we may be confronted with this situation, where we will have to ask for some time to complete our investigation, that is, we may have to ask for some continuance.

Trial Examiner Dudley: Well, it seems to me you can't expect the complaint to give the names of the witnesses that they expect to call. It does give a date. As you will notice, it says on or about May 1st, 1937 you supposedly started to initiate this Association.

Mr. Deahl: We are predicating that motion, primarily, on this paragraph of Section 4 of Article II of the Rules and Regulations of this Board, where it says, "That such charges"—speaking of the charges, not the complaint—"shall contain the following:

"(c) A clear and concise statement of the facts"—the facts, and when you say we initiated and promoted, and so forth, that we aided financially and otherwise, that certainly is not a fact. When you say we otherwise aided this Association, that is not a fact. That isn't even a

notable fact, it certainly is a conclusion, because there is no fact involved in the allegation.

Now, it says: "A clear and concise statement of the facts constituting the alleged unfair labor practice affecting commerce, particularly, stating the names of the individuals involved and the dates of the occurrence."

Now, that is what we have in mind, because here we are supposed to have done certain things at certain times.

Trial Examiner Dudley: Yes, but may I submit it points out the name of the individual who was allegedly discharged, it points out the name of the Association that was allegedly dominated, and so forth.

16 Mr. Deahl: Yes, that is true.

Trial Examiner Dudley: And it does give some dates.

Mr. Deahl: As to Elkins alone, that is only one of the charges of this complaint.

Trial Examiner Dudley: All right.

Mr. Deahl: Now then, we have here, for instance, that we are supposed to have advised, urged, threatened and coerced employees to join and pay dues in the Association.

Now, how can we be prepared to meet that charge, unless we know who we are supposed to have advised, urged, threatened and coerced, and until we know when it was and where it was, how can we go out and make any investigation to ascertain what the facts may be. Of course, we must understand that these things are news to the management.

Trial Examiner Dudley: Well, of course, that is one of the issues in the hearing.

Mr. Deahl: I know it is one of the issues.

Trial Examiner Dudley: But I think the better time to take that up is after the Board has put in its case. Then, as you say, you may want time.

Mr. Deahl: That is one of the reasons why I am speaking up now. It also says the Respondent in many other ways favored employees. Now then, advised, urged, threatened and coerced its employees to join and pay

dues in the Association, how conceivably could
17 anyone go out and make an intelligent investigation and prepare to present evidence in defense of that fact?

Trial Examiner Dudley: Well, let's wait until the Government has its case in. Then if you feel you need more time, you can raise that question then.

Mr. Deahl: Very well. That is what we had in mind, to make it clear what our position is, and that we are accepting this ruling, of course, we must accept the ruling, but we would like to have the Examiner bear in mind that we may be in the position here where we will require some time to make some investigation to be able to present what evidence is available by way of defense.

Trial Examiner Dudley: I understand the position, but my experience has been that usually counsel for the Respondent feel that they will need more time, and yet when the time comes, at the conclusion of the Board's case, they usually find they don't need as much as they thought, but we can take that up later.

Mr. Deahl: Yes, it is like having fire insurance, you hope you won't need it.

Trial Examiner Dudley: That is right.

Mr. Deahl: Now, we would like to take up the motion for a continuance, or are you prepared to rule?

Trial Examiner Dudley: I have studied those
18 motions. I will deny the motion of the Respondent to make the complaint more specific. As I announced before, exceptions are granted automatically.

Now, I have read both the motion for a continuance which the Respondent made before the Regional Director and which was acted upon by him, and also the motion for continuance which you are now presenting to me in the form of Board's Exhibit 1-G. I take it no argument is necessary on that?

Mr. Deahl: No.

Trial Examiner Dudley: I will deny that motion also, and as you and I have indicated by our conversations, if you find that you need more time later on to prepare your case, you may make a motion at that time. I hope that

you won't need any, but we can't tell until you get there.

Are there any more motions to be made at this time by any of the parties to the proceeding?

(No response.)

Trial Examiner Dudley: If not, Mr. Reynolds, I will ask you to proceed.

Mr. Deahl: Pardon me. May we have just one moment, please?

Trial Examiner Dudley: Yes.

(Short interruption.)

Mr. Deahl: We are ready.

19 Trial Examiner Dudley: I might point out to Respondent that in looking over your Answer I didn't see that you had answered the paragraphs one, two, three and four of the Board's Complaint, which has to do with the organization and nature of the business of the Respondent.

Mr. Deahl: That is covered by the stipulation.

Trial Examiner Dudley: I see.

Mr. Deahl: And, of course, we couldn't very well deny that, under oath, the nature of the business.

Trial Examiner Dudley: Well, I didn't know whether your understanding is—

Mr. Deahl: We understood under the rules of the Board that by not specifically denying that, it would be taken as confessed.

Trial Examiner Dudley: That is correct. I just wanted to be sure you understood it.

All right, Mr. Reynolds.

Mr. Reynolds: Will you mark this, please?

(Thereupon, the document above referred to was marked as "Board's Exhibit No. 2," for identification.)

Mr. Reynolds: As Board's Exhibit No. 2 I offer in evidence a stipulation which was today entered into between Seebirt, Oare and Deahl, for the Indiana & Michigan Electric Company, as its attorneys, and by myself, as attorney for the National Labor Relations Board.

20 This stipulation covers facts concerning the business of the Respondent and provides that either party may introduce additional evidence in explanation or in addition to the information contained therein.

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SAMUEL GUY,

a witness called by and on behalf of the National Labor Relations Board, being first duly sworn was examined and testified as follows:

DIRECT EXAMINATION

Q. (By Mr. Reynolds): Will you please state your name and address?

A. Samuel Guy, 130 North Wells Street, Chicago, Illinois.

Q. What is your occupation, Mr. Guy?

A. I am business manager of Local No. B-9, International Brotherhood of Electrical Workers.

Q. How long have you been in that capacity?

A. Almost four years.

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Q. Will you give the names of those officers of
33 the union?

A. L. M. Fee, F-e-e, is financial secretary.

Mr. Seebirt: L. M. Fee is what?

The Witness: He is financial secretary, and F. O'Brien is president, William Parker is vice president, Emmett R. Green is treasurer, D. A. Manning is chairman of the executive board. That is all of the principal officers.

Q. (By Mr. Reynolds): Does the union have an assistant business manager, an assistant to you also?

A. Yes.

Q. Who is that?

A. John R. Marks in this district. Do you want the others too?

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Q. And how is the union set up as to service it renders to local units? Are there local lodges of the union?

A. There is, yes. Chicago is the headquarters.
34 There is one set of officers in Chicago that covers the entire units, but they have sub-units, that is, they have their own local representatives on the different groups of the district.

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Q. Now, what is the affiliation of the International Brotherhood of Electrical Workers, as far as connection with any other labor organization is concerned?
35 A. Well, we are affiliated with the American Federation of Labor. It is a unit of the American Federation of Labor.

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Q. (By Mr. Reynolds): Now, Mr. Guy, in your
37 capacity as business manager of Local B-9, have you or at your direction has any attempt ever been made to approach employees of the Indiana & Michigan Electric Company for purposes of organizing them?

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A. Why, yes, there has been attempts to form
38 an organization with the employees of the company at different times for the last two and a half years. I can't give any exact dates, but I have been present myself at several meetings that we have held with the employees of the company for the last two and a half or perhaps three years.

Q. (By Mr. Reynolds): Did you ever have any contact with the management of the Indiana & Michigan Electric Company with regard to organizing?

A. I have. I called on Mr. English—

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Q. (By Mr. Reynolds): What occasion was it that you had contact with some officer of the company?

A. I have met Mr. English and Mr. Calvert in their offices.

Q. Can you place the date of the first meeting that you had?

A. Well, not the exact date, no, but it was perhaps a year and a half ago or two years.

Q. Do you recall what month of the year?

A. It is less than two years ago, I am quite sure.

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Q. Now, following this first meeting you had
41 with Mr. English and Mr. Calvert, what steps did you take, if any, with regard to organizing the employees?

A. Well, we started holding, I believe before that we had been holding meetings of the employees, inviting them to our meetings and telling them the purpose of organization and how we functioned, and so on, and that we thought it would be beneficial to them to form into an organization or become a part of our organization.

Q. You attended those meetings personally?

A. Some of them, yes; not all of them.

Q. Do you recall any particular meeting where you had occasion to talk with some supervisory employees of the company?

A. I do.

Q. About when did that take place?

A. Well, I believe that was perhaps in April; I would say the last of April.

Q. Of what year?

A. Of '37.

Q. What occurred on that occasion?

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Q. (By Mr. Reynolds): Now, let's get the cir-
43 cumstances of this encounter or meeting that you had with Mr. Carlton and Mr. Livelsberger. What were you doing at the time, just previous to your meeting with them?

A. Well, we was holding a meeting at a hall on Western Avenue known as the Falcon's Hall, and some of the employees of the company told me that there was two of the supervisors of the company sitting in a car—

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Q. You testified somebody told you there were
45 supervisors present at the meeting?

A. Yes.

Q. Who told you that?

A. Why, some of the employees of the company.

Q. Do you know their names?

A. Well, not all of them. I think probably Mr. Buckley, I believe he was the man that told me.

Q. Do you remember the names of any other people that said that or something like it to you?

A. No, I don't remember offhand who they were.

Q. Now, tell us again what was it that Mr. Buckley and perhaps others told you?

A. He told me that there was a couple of supervisors of the company sitting in a car across the street from the hall.

Q. All right. Go ahead with your story.

A. And pointed out to me a certain car that they were in. So I went over to this car, I approached the car and introduced myself. I told them who I was and what my purpose of being there was, and I asked them if they were—

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The Witness: I asked, I said, "Is one of you
46 gentelemen Mr. Carlton?" And he says to me, he says, "Well, what difference does that make, who I am?"

I said, "Well, we are holding a meeting across in the hall of some of the employees of the I. & M. Company," and I invited them over to the meeting, told them if they came over to the meeting they could hear what was to be said, what I had to say, and they could have—that-a-way they could have firsthand information.

And his remark to me was, he said, well, he would get that information anyway.

Q. (By Mr. Reynolds): Was there any one else in the presence of these two men that you know of?

A. There was three men in the car.

Q. Who was the third man?

A. I heard afterwards that it was Mr. Hoblitzel, but I only, when I approached the car, when I was told I was only told that Mr. Carlton and Mr. Livelsberger was the

gentlemen that were in the car. There was three men in the car, and I was told later the third party was Mr. Hoblitzel.

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Q. Is Mr. Hoblitzel a member of the Inter-
47 national Brotherhood of Electrical Workers?

A. He is.

Q. Now, did you upon any occasion have any other contact with executive officials of the company?

A. Only over the telephone.

Q. Now, when was that occasion that you had a telephone conversation with someone?

A. Well, it was a few months later. I talked to Mr. English over the telephone.

Q. And what was the occasion? How did it come about that you had this conversation with him?

A. Well, I thought I had an appointment with Mr. English. A friend of mine in Chicago told me that on a certain day at a certain hour that Mr. English would speak to me at his office in South Bend.

So on that same day and hour I went to his office and inquired for Mr. English, and his secretary told me that he wasn't in. So I told her, well, I had an appointment with Mr. English through another party, and I was quite sure that he understood that I had, and I would like very much to see him or talk to him if it was possible, that I drove from Indianapolis to South Bend to keep the appointment.

48 So she went in another office, and later on came out and told me that Mr. English was on the wire, I could talk to him.

So I talked to Mr. English and I told him I understood I had an appointment with him, and he said, no, that he had no knowledge of any appointment arranged through any one, and that he would be unable to see me or talk to me only over the phone.

He told me that he was, I believe, at the bath house, or somewhere, and he couldn't see me, so I told him I was sorry if there was any misunderstanding, that I had come from Indianapolis and I would like to have a few

minutes of his time to talk to him, and he denied any knowledge of the appointment, and that practically ended the conversation.

Q. Do you have any—

A. (Continuing): Although he did say to me, I believe, that my assistant, Mr. Marks, had made some different remarks to the men, that he had led them to believe, the men to believe that Mr. English was favorable to organization, and he seemed a little peeved that Mr. Marks had passed this word out among the men that the management was favorable to organization.

Q. That is all the conversation that you remember?

* * * * * * * * * * *

CROSS EXAMINATION

* * * * * * * * * * *

Q. Now, these officers that you have given here,
54 the names, Mr. Fee, O'Brien, Parker, Green, Manning and Marks, where do all of those men live?

A. Some of them live in Chicago and some of them in Indiana.

Q. What ones live in Indiana.

A. Mr. Marks lives in Indiana.

Q. Yes. The rest of them live in the city of Chicago?

* * * * * * * * * * *

Q. Yes. Well, out of the six executive officers, five of them reside in the city of Chicago?

55 A. That is right.

Q. And we have in the state of Indiana, we have three assistant business agents, two living in Indianapolis and one in Fort Wayne?

A. Four in Indiana.

Q. Who is the other man?

A. Marks.

Q. Oh, yes, Mr. Marks, that is right. And Mr. Marks resides where?

A. Michigan City, Indiana.

Q. None of these live in South Bend?

A. No.

* * * * * * * * * * *

Q. (By Mr. Seebirt): You didn't. Did you have
77 a meeting here in this Federal Building with Mr. Calvert, Mr. English and one of the Examiners of the Labor Relations Board?

A. I was asked to come here, Mr. Hays of the Labor Board had a meeting with Mr. English and Mr. Calvert were present at. I had nothing to do with arranging the meeting nor neither did I talk with Mr. English or Mr. Calvert.

Q. Didn't you participate in the conference?

A. In the conference?

Q. Yes.

A. I answered what questions was asked by the Examiner, Mr. Hays, of the Labor Board.

Q. Who else was present at that meeting?

A. I think Mr. Hill of the company was there with Mr. English and Mr. Calvert.

Q. Are you sure that Mr. Hill was there ?

A. I met a man there that was introduced to
78 me as Mr. Hill.

Q. Who else was there?

A. Myself, Mr. Marks, Mr. Hays. I believe that was all.

Q. You have no recollection of anybody else?

A. I believe Mr. Boyle was there, International President or Vice-President.

Q. Mr. Boyle living where?

A. Chicago.

Q. What is his first name?

A. M. J., Michael J.

Q. He is quite a prominent man in the organization, isn't he?

A. He is International Vice-President.

Q. How did you happen to have overlooked or forgot about him?

Mr. Reynolds: I object, if the Examiner, please.

Q. (By Mr. Seebirt): You were intending to omit recalling Mr. Boyle was present at the meeting, were you not?

A. I was not.

* * * * * * * * * *

Q. Now, in this conference with Mr. English, and
81 Mr. Calvert, you were asked about the organization of the employees, were you?

A. Well, I told Mr. English my position, we decided—

Q. Well, what was it you said?

A. To take over the organization.

Q. The organization of what?

A. The men working for the company that Mr. English represents.

Q. You mean the organization of the men employed by this company?

A. Yes.

Q. And you meant the organization of them in your union?

A. That is right.

* * * * * * * * * *

Q. What was your purpose that you told him
82 about?

A. That the men wanted organization, that they seemed to want organization and that we were a bona fide labor organization and that we had jurisdiction in this particular community or part of the State, and if they were going to be organized that they rightfully belonged in our organization.

* * * * * * * * * *

Q. You didn't know that. Well, why was it
85 then, if you just wanted to confer notice upon them, that you came to South Bend from Indianapolis to meet with Mr. English and—a second time? Did you want to give him notice again?

A. Not necessarily. I just wanted to talk to him.

86 Q. Now, you know that you had a purpose in mind, don't you?

A. I wanted to talk to him about organization, exactly, that was the purpose. I am not denying that.

Q. And the purpose was to obtain from Mr. English his assistance?

A. Not necessarily.

Q. His assistance in causing the employees to come in your union rather than in to a C. I. O. union or an Independent union; that was your purpose, wasn't it?

A. Well, along those lines, yes.

* * * * * * * * * * *

88 Q. He said in some instances I understand that Mr. Marks has been going around saying to the employees that I am in favor of organization in your unit?

A. Yes, along those lines.

Q. Didn't he say furthermore I want you to understand that nothing of that kind is true?

A. Well, perhaps he did.

Q. Yes.

A. I told him that I didn't see how Mr. Marks, he should not be making remarks like that, because he hadn't indicated during our previous meeting that he was in favor of our organization.

89 Q. Now, during this meeting didn't both he and Mr. Calvert tell you definitely that this is a subject that we have no concern about under the law, we have no right?

A. Sure.

Q. To express any wish one way or the other?

A. That is right.

Q. He told you that. At the different times that you conferred with Mr. Calvert and Mr. English, I include the three that you have referred to, there was never at any time brought up any complaint of any employee, was there?

A. That I brought up any complaint of the employees?

Q. Yes.

A. No, I don't think so.

Q. And there was no discussion of wages or hours or any grievance, was there?

A. No, we didn't go into wages and hours, just talked organization in a general way.

Q. Or any grievances?

A. No.

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Q. Mr. English and Mr. Calvert never denied
90 you any right to solicit the employees as members of your union, did they?

A. No.

Q. Never told you to keep off of the property?

A. No.

Q. Never told you anything about interfering with the hours of service of the employees?

A. No.

Q. As a matter of fact, you had a free hand to solicit their membership, didn't you?

91 A. I suppose so.

Q. And you did as a matter of fact solicit their membership?

A. Yes.

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A. Only at a meeting, a regular meeting of them.

Q. Now, I believe that there were certain meetings down here at South Bend that you invited these employees to, is that right?

A. That is true.

Q. How did you invite them to the meetings?

A. Just by personal contact.

Q. By personal contact?

A. Yes.

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Q. (By Mr. Seebirt): There is one further inci-
101 dent that you testified to on direct examination that I want to ask you about, and that is that you testified that you were holding a meeting of some employees in South Bend on Western Avenue, do you recall that?

A. Yes.

Q. And that some employee came to you and said that there were certain other employees of the company outside in an automobile across the street from the place of the meeting, you were told that?

A. That is right.

Q. And without any further information you got up and went out and went across the street to interview them?

A. That is right.

Q. And you told them that if they wanted to come to your meeting they had an entire right to do so?

A. Told them they were welcome to come.

Q. If that was the case, there wasn't really much objection to their being across the street, was there?

A. I didn't object to them being across the street.

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JOHN R. MARKS,

a witness called by and on behalf of the National
113 Labor Relations Board, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q. (By Mr. Reynolds): State your name and address, please.

A. John R. Marks, Michigan City, Indiana.

Q. What is your occupation, Mr. Marks?

A. I am Assistant Business Manager, Local Unit B-9, I. B. E. W., Northern Indiana Division.

Q. How long have you been in that occupation?

A. It will be five years next May.

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Q. Did you ever have anything to do with at-
114 tempts to organize the employees of the Indiana & Michigan Electric Company?

A. I did.

Q. When was your first effort made along that line?

A. Well, I can't give you the exact dates, but it is approximately three years ago that I made my first contact.

Q. What did you do at that time?

A. I went to the Buchanan Hydro-Electric Station at Buchanan, Michigan on the St. Joseph River and talked to an operator by the name of Sanford and also his assis-

tant, but I don't recall his name. I know several of the boys there, but I don't remember which was on the shift with him.

Q. After that time did you solicit any other employees?

A. I didn't. I went to Berrien Springs Hydro Station and I talked to two or three of the boys, talked to a Mr. Harris and Mr. Heaps and also a relief operator, I just don't recall his name, but it sounds something like Robinson or Robertson, or some such a name. He lives about a half a mile south of Mr. Harris' home. At that time he was relieving at Benton Harbor Station also.

Q. Now, from that time on down to the present, describe in general what your activities have been along the lines of organizing this company, if any?

115 A. I stopped in at the Hydro-Electric Station at Elkhart one evening and talked to two chaps over there. One of them is named Bottorf or Botterdorf, and his helper, I don't recall his name, and I also talked to the linemen over here in South Bend and many in the Buchanan, Mr. Buckley whom I have known for sometime, Mr. Otis.

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Q. (By Mr. Reynolds): When, if ever, did you begin to have regular meetings of the employees of the Indiana & Michigan?

A. We started to have regular meetings about the time or shortly after a conference between the C. I. O. and the company officials of the I. & M. Electric Company.

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CROSS EXAMINATION

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123-124 Q. At approximately that time what was the situation here among the employees of the Indiana & Michigan Electric with respect to the efforts that were being made to organize them for the A. F. of L. and the C. I. O.?

A. Well, as I recall, we learned from some of our linemen here in South Bend that the C. I. O. had a charter

and had part of the Twin Branch Power Plant organized, much to our surprise; we hadn't heard about it, from any other source until that time, and I now first began contacting operators in the outskirts, and none of those boys seemed to know anything about it, and these linemen here thought it would be a good idea to hold regular
125 meetings for the A. F. of L., which we started to do.

Q. Did you find as a result of your investigation that there was some considerable activity to organize for the C. I. O.?

A. Yes, I did.

Q. And then you decided that it was time to get busy to shut out the C. I. O., is that right?

A. Well, we decided it was time for us to protect our rights, our organization, that is our jurisdiction.

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Q. Now, as I understand it, Mr. Marks, you
133 have been soliciting the employees of the Indiana & Michigan Electric off and on for a period of approximately five years?

A. That is incorrect.

Q. What?

A. That is incorrect. Three years.

Q. Three years, to obtain their membership in what we are calling here Local B-9?

A. That is correct.

Q. During that time were you ever denied the
134 right by any of the officers of this company to contact the employees of the Indiana & Michigan Electric Company for that purpose?

A. I have never met any of the officers of the company.

Q. What is the answer now, were you or weren't you?

A. No, because I never met any of them.

Q. Did you ever make any complaint to any of the officers of the company—

A. I did not.

Q. —that you were not being accorded equal rights and privileges—

A. I did not.

Q. —in contacting the employees of this company relative to membership in Local B-91

A. I did not.

Q. When you would make these solicitations, did you go on the property of the Indiana & Michigan Electric Company?

A. I believe I stated a moment ago that I did at Berrien Springs, Buchanan, Hydros, also Elkhart.

Q. You found that you had a right to do that?

A. I did.

Q. You felt that the company would make no complaint about that?

A. I didn't know.

Q. And when you were so soliciting memberships, you talked with the employees while they were at work?

A. That is correct.

135 Q. In the regular course?

A. In these particular situations I have mentioned, that is correct.

Q. And there was no criticism called to your attention of your conduct in that respect as far as the officials of the company were concerned?

A. No, sir.

Q. You were not ordered off the property at any time?

A. No, sir.

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TAYLOR EDGELL,

a witness called by and on behalf of the National
137 Labor Relations Board, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q. (By Mr. Reynolds): State your name and address.

A. Edgell, Taylor Edgell.

Q. What is your address, Mr. Edgell?

A. 563 Niles Avenue, Benton Harbor, Michigan.

Q. Are you employed by the Indiana & Michigan Electric Company?

A. Yes, sir.

Q. How long have you worked for the company?

A. About 16 years.

Q. And what is your occupation?

A. Line foreman.

Q. Line foreman in what division of the company?

A. Michigan Division.

Q. Now, in the Michigan Division there are how many line foremen?

A. Five, that is besides myself.

Q. Does the Michigan Division have any assist-
138 ant general line foremen?

A. Assistant general line foremen?

Q. Yes.

A. No.

Q. All the line foremen in the Michigan Division are all equal, everybody?

A. That is right.

Q. Isn't it a fact that you have supervision over these other line foremen in the Benton Harbor Division?

A. That is right at the present time, but I am only acting in that capacity until such time as the man who is sick comes back.

Q. And who is the man who is sick?

A. P. J. McKinder.

Q. What is his title?

A. General line foreman.

Q. Haven't you in times past acted as Mr. McKinder's assistant and haven't you continuously acted in that capacity for some time?

A. I have acted as assistant to Mr. McKinder only in this way: Mr. Turner was superintendent of that division and he took sick and Mr. McKinder took over his position while he was sick, and then he took sick and I went in to help out and then when McKinder returned I continued to act as his assistant until such time as Mr. Turner returned.

139 Q. How long have you been acting as assistant to Mr. McKinder?

A. Approximately a year and a half.

Q. About what month and what year was it that you began to act in that capacity?

A. I couldn't state definitely what month. It was in the spring of 1937.

Q. Describe what the changes in the duties that you performed for the company were at that time from what they had been previously?

A. I didn't get that.

Trial Examiner Dudley: Read the question back.

(Question read.)

Mr. Seebirt: You mean in what capacity?

Mr. Reynolds: As assistant to Mr. McKinder.

Q. (By Mr. Reynolds): How were your duties different from what they had been before?

A. Well, before I was directly in charge of a crew of men, that is, as a crew foreman or line foreman, and as his assistant I contacted the different crews.

Q. Before you became Mr. McKinder's assistant you were foreman of a group of men who went out and worked on the lines?

A. That is correct.

Q. How many men were in the group that you were line foreman of?

A. Oh, they would vary. There isn't any spe-
140 cific amount of men to be in those crews. I have handled all the way from 4 to 24.

Q. You mean as a line foreman before you became Mr. McKinder's assistant?

A. That is correct.

Q. Now, what change took place in your duties after you became Mr. McKinder's assistant?

A. I think I answered that question once before, that I contacted all the crews instead of just being in charge of one.

Q. What do you mean by you contacted all of the crews? What does that mean? What did you do? Describe what your daily routine is?

A. Well, I would take the foremen out and show them jobs ahead of time, before they went on to them with their crew, and also contact them to see, contact them from time to time to see that the work was progressing right.

Q. Do you have headquarters where you customarily remain from day to day or are you constantly on the go traveling about from one gang to another?

A. Oh, nothing was ever stated in regard to that. I had no definite setup in that respect. I could come in the office any time I wanted or I could stay out all day.

Q. Do you have an office?

A. Do I have an office?

Q. Yes.

141 A. Only temporary, as I stated before.

Q. Well, it has been temporary though for a year and a half, hasn't it?

A. That is correct.

Q. Where is your office?

A. Just what do you mean, by where is it?

Q. Where is it located?

A. It is located in the service building.

Q. In Benton Harbor, Michigan?

A. That is right.

Q. And do you at the present time or in the past year and a half perform any manual labor?

A. Oh, no, unless I want to step in and help the fellows out. I have did that at times.

Q. Would you say that that is frequently or rather occasional?

A. Occasional.

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Q. Are you a member of or connected with

143 Michiana Electrical Utility Workers Association?

A. Yes, sir.

Q. And what is your connection with that organization?

A. I am president of the Michigan Division.

Q. Are you also in some other capacity with the organization?

A. Yes, I am secretary of the general council.

Q. (By Trial Examiner Dudley): You are what?

A. Secretary of the general council. That general council consists of members from each division.

Trial Examiner Dudley: Oh, I thought you meant a lawyer, general counsel of the company.

Q. (By Mr. Reynolds): Have you at any time since you became a member of the Michiana Electrical Utility Workers Association held any other office?

A. Yes, I was vice president.

Q. Vice president of the entire organization?

A. That is right, the first year or part of a year.

Q. And when you speak of the entire organization, you mean the general council as distinguished from the local council?

A. That is right.

Q. The division council. When did you become a member of the Michiana Electrical Utility Workers Association?

144 A. In the spring of 1937.

Q. What were the circumstances under which you joined the organization? Who solicited you?

A. Well, I don't ... as anybody in particular solicited me. I was a member of a group that held a meeting and I joined up with the rest of them, that is signed up with the rest of them, signed a petition.

Q. How did the movement, the organization come to your attention in the first place, in the first instance?

A. I don't know as I can recall exactly the first instance. I can remember of a group getting together one noon hour and talking about this, somebody in the group had started talking before I got in on it, so I couldn't just exactly tell you who it was that first talked of it.

Q. Well, what do you recall about the origin of the Michiana Electrical Utility Workers Association? Who seemed to be head of that movement?

A. Well, as I came in on this meeting, there wasn't anybody that I recall that was leading. They were asking for a representative, for that group to get a repre-

sentative to come down to South Bend to attend a meeting that night.

Q. Who made that request?

A. I don't recall.

Q. You spoke something about a petition. Was that petition circulated at that time in that meeting?

145 A. Yes, it was presented.

Q. Had it been presented earlier to you?

A. That is right.

Q. Who presented the petition to you in the first place?

A. It was a lineman from South Bend.

Q. Who was he?

A. I couldn't tell you his last name. His first name was Jack.

Q. Jack Benton?

A. I wouldn't say definitely whether that was him or not.

Q. Where did he present that petition to you?

A. In the garage at the company building there at Benton Harbor.

Q. And as a result of that you attended a meeting later on?

A. That is right.

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159 Q. Have you ever been given any instructions of any kind by the management of the company
160 with regard to its labor relations policy?

A. No, sir.

Q. Has there ever been any bulletin posted or notice posted for the employees to see indicating the policy of the company?

A. Not to my knowledge.

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Q. In both capacities, in any work you perform
161 for the Michiana Association, how much time do you devote to that?

A. I have three meetings a month.

Q. Three meetings a month?

A. That is right.

Q. And in the meantime, do you have any other work that you have to do for the Association, clerical work of any kind?

A. Nothing that isn't taken care of at home or at the regular meetings.

Q. Who types the minutes for you?

A. We have a stenographer that is hired to do that.

Q. Who has a stenographer?

162 A. The organization

Q. The Michiana?

A. The Michigan Division.

Q. The Michigan Division?

A. That is correct.

Q. And where does that stenographer work?

A. She is at present working in the distribution office.

Q. She is an employee of the Indiana & Michigan Electric Company?

A. That is right.

Q. Does she do that work on company time or on her own time?

A. Does it on her own time.

Q. Does she do it at the office?

A. No, sir, she does it at home.

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Q. When was the first occasion that you ever

164 had a meeting with the management?

A. I can't recall the date, but I think the records will verify it.

Q. Well, why were you along with that committee that attended the management?

A. Why was I along?

Q. Yes.

A. Because I was a member of the committee.

Q. What committee was it?

A. This general council.

165 Q. And what was the purpose of the meeting?

A. The first meeting?

Q. Yes.

A. I think we presented a petition to the company for recognition for our association at the first meeting.

Q. Can you state when that was with reference to the first meeting on May 20th, 1937?

A. No, I could not state definitely.

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Q. Now, what was said between the parties
167 present?

A. That is pretty hard for me to relate, everything that was said at a meeting that happened a year and a half ago.

Q. Well, what was the substance?

A. As I recall, we presented our petition and they turned us down on it.

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Q. How many times would you say you have
168 been in to see the management?

A. Three or four times, I would say.

Q. Were those meetings held during working hours?

A. I don't recall that any of them were during working hours. I believe they were on Saturday, the most of them. However, I may be wrong in that statement.

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CROSS EXAMINATION

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Q. Now, I want to go to the time when the first
177 suggestion was made, at least to you, about the organization of the Michiana, and I think you have fixed that time as about the 19th day of May of last year, is that correct?

A. Approximately, yes, sir.

Q. Yes. And that the first suggestion that was made to you was had at a lunch hour, isn't that true?

A. That is right.

Q. And do you know what the discussion was about at that time as to why you men should, employees should form this union, the Michiana?

A. Well, as I recall it, this fellow that I talked to stated that the C. I. O. had already started to get in down here at South Bend, and the employees were going to form an association to keep them out.

Q. Yes. Was this discussion held at Benton Harbor?

A. That is right.

178 Q. Was there anything said about what the activities of the C. I. O. had previously been in labor matters in South Bend? Was there any discussion of that kind?

A. Not that I recall.

Q. Yes, but that it should be formed for the purpose of keeping the C. I. O. out was said at that time?

A. That is correct.

Q. And it was requested at that time that you bring some of the employees from Benton Harbor to the meeting to be held on the 20th, was it?

A. No, he simply asked for the employees of Benton Harbor to send a representative to a meeting in South Bend.

Q. I see. And on that day or the day before there was a petition or some paper to the effect that an independent union should be formed circulated, was there?

A. That is correct.

Q. And did you take one of those petitions?

A. No, I did not.

Q. Was there one circulated up at Benton Horbor?

A. There was.

Q. And did you sign the one that was circulated at Benton Harbor?

A. I did.

Q. Now, before the 20th did you call on somebody at Benton Harbor, call some of those employees to-

179 gether to talk over the sending of a representative to South Bend?

A. Yes.

Q. And where was that meeting held?

A. As I recall, it was held in the garage at Benton Harbor.

Q. In the garage?

A. Yes.

Q. Now, Mr. Edgell, at this lunch hour or at this meeting in the garage, was there anybody like Mr. English or Mr. Calvert or any superintendent present?

A. No, there was not.

Q. Was there any suggestion made by the men at the lunch hour or in the discussion at the garage that the management, the Indiana & Michigan Electric Company, wanted some such union formed?

A. No, not to me.

Q. Now, at this meeting in the garage, do you recall how many men attended that?

A. No, I couldn't recall definitely how many.

Q. Well, I know you couldn't definitely, but was it five, ten, twenty or twenty-five?

A. I would say—

Q. What is your judgment about it?

A. I would say about fifteen or twenty.

Q. Fifteen or twenty?

A. Yes, sir.

180 Q. Do you remember what the discussion was there?

A. Well, they just were discussing that they were trying to form this association.

Q. Yes.

A. (Continuing) And that they would like to have them appoint somebody to attend a meeting that evening at South Bend.

Q. Well, now, I suspect there must have been some reasons given at that meeting as to why an association should be formed, wasn't there?

A. Well, yes. The discussion was that they felt that inasmuch as the law allowed them to form an organization of their own, that they would, they were attempting to form such an organization, so that they could handle their own affairs and get away from paying such high dues as these other organizations charged.

Q. Was there anything said at that meeting about the C.I.O. and its activities?

A. The only thing that I can recall was that the C.I.O. had started to organize in here and had some members in the Twin Branch plant.

Q. You mean that was said at the meeting?

A. That is right.

Q. Yes. Can you recall anything else that took place at that meeting in the garage?

A. No, I don't believe that I can.

181 Q. Did they select a representative or representatives at the meeting to be held on May 20th?

A. They did.

Q. Yes. Whom did they select?

A. Myself.

Q. And did you attend?

A. I did.

Q. Do you recall whether any other person or persons from Benton Harbor, I mean employees, of course, whether they attended with you?

A. No, there was nobody else from Benton Harbor. There was one other from the Michigan Division, from Buchanan.

Q. That came from Buchanan?

A. That is right.

Q. And he attended?

A. Yes.

Q. And how many representatives of employees attended the meeting on May 20th?

A. Well, I believe May the 20th is incorrect. I believe this meeting I have reference to was held on the 19th.

Q. Oh, it was. It was a preliminary meeting to the meeting of May 20th, was it?

A. That is correct, yes.

Q. And where was that meeting held?

182 A. It was held out on Riverside. I couldn't tell you the exact location, I don't know the streets out there, and I don't recall.

Q. Riverside in South Bend?

A. River Park, I believe.

Q. River Park. At a dwelling house out there?

A. Yes, sir.

Q. And whose house was that?

A. I believe it was Mr. Henderson's.

Q. And do you remember how many representatives of the employees were present at that meeting?

A. Well, I would say ten or twelve.

Q. Ten or twelve?

A. Yes.

Q. Was there anybody there representing the management, Mr. English, or Mr. Calvert or any superintendent?

Mr. Reynolds: I object, if the Examiner please, on the ground that calls for a conclusion of the witness.

Mr. Seebirt: It does not call for a conclusion. It asks for a fact.

Trial Examiner Dudley: I will allow him to answer.

A. Not to my knowledge, there wasn't.

Q. (By Mr. Seebirt): And what was the discussion that was had there in that meeting among those ten or twelve?

183 A. Well, it was similar to the discussion that had taken place in Benton Harbor. I don't just recall who conducted the meeting, but the same facts were brought out, that their intention was to form an organization of their own, and it would be pretty hard for me to tell you what went on in the meeting, but it was all along the same lines.

Q. Did anybody in that meeting make any such statement, that Mr. English or Mr. Calvert or the officers of the corporation desired the formation of such an association or union?

A. Not to my knowledge, there wasn't any.

184 Q. Was there some discussion there about the fact that for the formation, drawing the by-laws and constitution and matters of that kind, that group would need an attorney?

A. That is correct, yes.

Q. Was that discussed there?

A. Yes.

Q. What was the discussion about the employment of an attorney?

A. Well, as I recall it, somebody suggested that we should have an attorney and draw up our by-laws as near to the law as we could, that is the Wagner Act.

Q. Yes, and to advise you under the Wagner Act?

A. That is correct.

Q. As to its provisions and requirements, is that right?
A. That it right.
Q. What was said about whom you should employ?
A. I don't believe anything was said as to whom we should employ. I think, as I recall it, there were several suggestions and we finally decided that Mr. Jernegan would be contacted.
Q. Somebody present suggested Mr. Jernegan?
A. That is right.
Q. Who is Mr. Jernegan?
A. Well, he is an attorney in Mishawaka.
Q. Had he some official position also, at this time?
A. I don't know that.
185 Q. Is a State Senator from this County in the Legislature?
A. I wouldn't know, I am sure.
Q. Were you one of the men who went and interviewed Mr. Jernegan?
A. No, I was not.
Q. So you don't know about that interview and the employment of Mr. Jernegan?
A. That is correct.
Q. Did Mr. Jernegan thereafter attend several of your meetings?
A. Yes, sir.
Q. And did advise you, did he?
A. That is right.
Q. And did he assist you in the drafting of your by-laws or constitution?
A. Yes, sir.
Q. And also was he assisting you in the drafting of an agreement with the company, later on?
A. Yes, sir.
Q. Do you remember the meeting of May 20th?
A. I believe I do.
Q. Where was that meeting held?
A. It was held in a school house, I believe it was the St. Joseph School.
Q. Here in South Bend?
186 A. That is right.

Q. How many employees attended that meeting?

A. Well, I wouldn't be able to state. There were quite a number of them there. The room was nearly full, as I recall it.

Q. And that was an organization meeting?

A. That is right.

Q. Have you examined the minutes of that meeting here that have been introduced in evidence?

A. Have I read them, do you mean?

Q. Yes.

A. Yes, sir.

Q. And do those minutes as introduced correctly state about what happened there?

A. Well, I was not secretary of this organization at this time, but I have had these files right along and I would say they were the correct minutes of that meeting.

Q. Before that meeting do you know whether these men who were interested in the organization of this Association had visited Mr. Jernegan and obtained from him the preparation of certain papers?

A. I was informed that they had, yes.

Q. Now, these minutes of May 20th, 1937, the last paragraph on the first page thereof, state as follows:

"Mr. Lambert then suggested that we present to
187 the management a petition or letter suggesting that this organization be formed. Such a letter has been prepared anticipating our intentions."

Do you recall that incident?

A. Yes.

Q. And by whom was that letter prepared?

A. I understood it was prepared by Mr. Jernegan.

Trial Examiner Dudley: May I ask how he spells his name?

Mr. Seebirt: J-e-r-n-e-g-a-n.

Q. (By Mr. Seebirt): And that letter which he had prepared constitutes a letter headed "South Bend, Indiana, May 20th, 1937," signed by twenty different employees?

A. That is right.

Q. And is contained in this minute book?

A. That is right.

Q. And this letter was also signed by you, I believe, wasn't it?

A. That is right.

Q. And in that letter after the meeting of May 20th you informed Mr. English as the General Manager of the Indiana & Michigan Electric Company that you had formed the Michiana Electrical Utility Workers Association, and that you had a majority of all the employees in that company, didn't you? Look at it.

A. A committee was appointed to inform him
188 of that.

Q. No, your letter informed him of that fact, didn't it?

A. I believe the committee presented this.

Q. Yes, but the letter informed him of those facts as given in this question?

A. Yes, sir.

Q. Did you go with the committee personally to present this letter?

A. I did not.

Q. How was the letter presented, by a committee?

A. I believe that is correct.

Q. Well, you testified yesterday, I believe that you personally did have a meeting with Mr. English and Mr. Calvert about this organization, didn't you?

A. That is right.

Q. And I think that you used the expression that when you first went there they turned you down?

A. That is right.

Q. If you did not go with the committee on or about May 20, when was that meeting?

A. Well, there is a record of it in the book. I couldn't tell you the date. It is in there some place.

Q. Who went with you to visit Mr. English and Mr. Calvert about this matter?

A. Mr. Holmes, Mr. Collins—
189 Q. Who?

A. Mr. Collins, and Mr. Denman.

Q. Where was that meeting held?

A. In the main office building.

Q. Who was present representing the management?

A. Mr. English and Mr. Calvert.

Q. And what was said by your committee to them?

A. Well, we presented our petition for recognition to them and they asked us if we wanted recognition for all the members of the Indiana & Michigan Electric or for our members of our Association only, and as I recall it, it was something we had not even thought of, and so we could not answer, and that is practically all there was to that meeting, and we decided to confer with our attorney.

Q. To refresh your recollection, didn't they say something to you about the fact that they had some other petition from some other group?

A. That is correct.

Q. Who was it said that?

A. I believe Mr. Calvert stated that they had a petition from the C. I. O.

Q. Well, in connection with that statement did he not say something about the fact that "We are not sure that you and your group represent a majority of the employees"

A. Well, he said something to that effect.

190 Q. And that you will have to satisfy us that you do represent a majority of the employees, didn't he say that to you?

A. Yes. There is minutes in that book that covers that statement of his, but I just can't recall his words.

* * * * * * * * * *

Q. So these minutes here recite that the man-

191 agement, Mr. English and Mr. Calvert, asked you by what authority you were presenting your agreement and then your answer was by the consent of the majority of the employees?

A. That is correct.

Q. And when you said that to them they did not accept your statement, did they?

A. No, they did not.

Q. What did they require you to do later?

A. Well, they required us to show that we had a majority of the employees in our organization.

Q. Yes, and in what form or manner did you make that showing?

A. Well, I believe we got a sworn statement before a notary public as to our exact membership.

* * * * * * * * * * *

Q. How long was your organization engaged in
195 the work of preparing these by-laws for the purpose of adoption by the general organization?

A. Oh, I couldn't state definitely how long. It was quite some time. I know I attended quite a few meetings.

Q. These minutes here show a great deal of discussion as to the provisions to be inserted in the by-laws, isn't that true?

A. That is right.

Q. And you would say there were how many meetings in which your members discussed the question of the provisions and what should be placed in these by-laws?

Mr. Reynolds: I object, if the Examiner please, on the ground that the minutes speak for themselves on that point.

Mr. Seebirt: No, they don't necessarily.

Trial Examiner Dudley: Well, perhaps it would save time to have him tell us, if he knows.

A. I don't know definitely how many meetings. There were several.

Q. (By Mr. Seebirt): Yes. And you may state whether or not you attended most of those meetings or all of them?

A. I attended all of them.

Q. Was Mr. Jernegan, the attorney, present at most of them?

A. That is right.

Q. How many of them held in his office?

A. I believe all of them.

196 Q. Now, after you formed this organization, adopted your by-laws and set up the complete organization, did you handle, did the organization which

you set up handle any grievances for the employees?

A. Yes.

Q. Would you say, do you have any idea what number you have handled?

A. Well, no, I couldn't state definitely how many.

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Q. Now, did one of your grievances, or rather,
197 a demand have to do with an increase in wages for the entire list of employees?

A. Yes.

Q. And did you submit such a demand to the management?

A. That is right.

Q. Do you recall approximately what time that was done?

A. No, I cannot.

Q. Was it in the year 1937—

A. That is right.

Q. —or 1938?

A. It was in '37.

Q. And were negotiations held just one day or over a considerable period of time with reference to that subject?

A. Well, I think, as I recall it, we had several talks with them in regard to it.

Q. Yes. You had several talks with Mr. English and Mr. Calvert?

A. That is right.

• • • • • • • • • • •

Q. And what was the demand that your organization was making with respect to an increase in wages?

A. You mean the amount?

Q. Yes.

198 A. I couldn't state definitely now. I believe it is in the record, though.

Q. Well, to refresh your recollection—

A. (Continuing): It seems to me like it was a 15 per cent increase.

Q. Yes, it was 15 per cent?

A. I believe that is correct.

Q. And what was the increase that was ultimately given to all of the employees?

A. Five cents on the hour.

• • • • • • • • • • •

Q. I believe while those discussions were going on as to the increase of wage, there was also, as shown by these minutes, a good bit of discussion as to the application of the rates of pay and consequent question of classification of employees, wasn't there?

A. That is correct.

• • • • • • • • • • •

Q. (By Mr. Seebirt): Now, what was said by the
199 management with respect to the classification of employees?

A. Well, in the first place, they gave us quite a lot of discussion on that. They didn't care to classify the employees, but after several meetings they did agree to classify certain employees, that is, certain departments.

Q. Yes. Well, what was said by you and your committee as to the importance of determining a correct classification?

A. Well, we felt that was the basis of any organization, to get the employees classified, so that we would know what each one was getting and something to work from.

Q. Well, in the wage structure of the I. & M., I take it, then there must be different wages set up for different classes of employees, is that right?

A. That is right.

• • • • • • • • • • •

Q. I see. And were many of the grievances that
200 were submitted to the management, either to the superintendents or to the general management, did they have regard to correct classification of employees?

A. That is right, they did, many of them.

Q. Now, I think you told Mr. Reynolds yesterday that you had contact with a number of crews, line crews, doing the work for the company at the present time?

A. That is right.

Q. And you said that in one crew there might be as many as 4, as few as 4, or as many as 25 men working at one time?

A. I didn't state that in regard to the crews I am handling now. He asked me how many men were in a crew, and I told him they could be from 4 to 25.

Q. Yes. I take it, then, during the past year and since the formation of this independent union, you have had contact with a great number of employees in the line crews?

A. That is right.

Q. Yes. Altogether, in all of these crews it
201 would probably amount to what number?

A. Oh, in the neighborhood of 20.

Q. Do you know whether any of them belonged to this union here that is the complainant, B-9?

A. No, I do not, definitely.

Q. You do not know. Do you know whether any of the men in it belonged to this American Federation of Labor union?

A. The only thing I can give you is hearsay.

Q. Hearsay?

A. I don't know definitely.

Q. Now, on account of hearsay and what you have heard generally, have any of these men been discriminated against by you?

A. No, sir.

Q. Are any of them called out on extra time by you?

A. To work overtime?

Q. Yes.

A. Yes, if it is necessary.

Q. If it is necessary. And you have selected those men for extra time, overtime, on the basis of being members of your union, Michiana?

A. No, sir.

Q. Has that received any consideration at all in the designation of men who work overtime?

A. None whatever. We have a method up there
202 of distributing the overtime to all of the employees.

Q. What is that method?

A. Well, I keep pretty close track of it, and work this crew one time and the other crew the next, to distribute the time equally with them as near as possible.

Q. Well, can you do that exactly, just according to the call that a man has had?

A. No, you can't, you can't do that for the reason you might have a job that would require a larger crew, or something, so that you might have to call them out twice in a row.

• • • • • • • • • • •

Q. I see. Have you had any of the men working under you, have you had any of them complain that they have been discriminated against because they don't belong to the Michiana?

A. No, sir.

Q. You have had no such complaint?

A. No, sir.

Q. And have you had members of the Michiana state to you that they are getting a better break than they used to—

A. No.

Q. —because of the fact they belonged to it?

203 A. No, sir.

Q. As far as you know, there has been even no suggestion of a discrimination with reference to union connection, is that right?

A. That is correct.

• • • • • • • • • • •

204 Q. (By Mr. Seebirt): Mr. Witness, do you have any authority from your company to hire employees?

A. No, sir.

Q. Do you have any authority from your company to discharge employees?

205 A. I do not.

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206 Q. What were the arguments that you made? I suspect you solicited some of the men to join, didn't you?

A. Yes, sir.

Q. And what were the arguments and statements which you made to induce them to join it?

A. Well, I have stated it a couple times before. I thought that we would better handle our own business locally, our dues are much lower and we could derive just as much benefit, and as near as I could find out, our conditions and our wages were just as good as any of the surrounding territories.

Q. Well, in any of these statements made by you to the employees, was anything said about what the relations of the employees and the company had been in the past?

A. No.

Q. How?

A. No, sir.

Q. Or was anything said in your meetings, particularly the one of May 20th, about the relations between the employees and the company in the past?

A. Not that I recall.

Q. You mean in all of that group—I just want to refresh your recollection—that in all of that group nothing was said about the fact that this company had had no strikes and no labor difficulties?

A. Well, I covered that in my statement.

207 Q. What?

A. I covered that in my statement. I said that conditions were such, that is, what we call our working conditions were such that we had no kick, no reason to join an organization.

Q. Well, what is the fact as to your relation with this company during the depression that started in 1929 and 1930? Did the company immediately cut the wages of its employees?

A. No, sir.

Q. Did it ever cut the wages of its employees?

A. Not since I have been working for them.

Q. And how long has that been?

A. 16 years.

Q. Yes. When the N. R. A. went into effect, the hours of service were reduced by the N. R. A., were they not?

A. That is right.

Q. And what was the action of the company with respect to wages under those reduced hours?

A. I believe they increased our wages.

Q. How much did they increase them?

A. I couldn't recall offhand.

Q. Well, to refresh your recollection, didn't they increase them enough so that your pay check and income under the reduced hours would be the same as it was with the higher hours?

A. Well, I never checked that, so I could not
208 state definitely. I know we had an increase in pay. That is all I can tell you.

Q. Yes. Then since then how many increases have you had?

A. Two or three.

Mr. Seebirt: Yes. All right. That is all.

RE-DIRECT EXAMINATION

Q. (By Mr. Reynolds): Mr. Edgell, in your mind what is the purpose of a labor organization of employees in a company?

* * * * * * * * * * *

A. Well, I would say it would be to better our
209 conditions.

Q. (By Mr. Reynolds): Was that the purpose of the Michiana Association?

A. In one sense, yes.

Q. Haven't you just told Mr. Seebirt that the employees of the Indiana & Michigan Electric Company had no reason to join an organization?

A. I don't believe I made that statement.

Q. What was your statement?

A. I don't recall the question now. If you can refer to the question, I will answer it.

* * * * * * * * * * *

Q. (By Mr. Reynolds): You are an officer of the
212 Association, aren't you, Mr. Edgell?

A. Yes, sir.

Q. You have been since it was started?

A. No.

Q. You were elected vice-president, were you not, at the time that other general officers were elected?

A. That is right.

Q. And from that time down to the present you have been in an official capacity with the Michiana Association?

A. That is right.

Q. Is it only your opinion that there was no reason for this organization other than to eliminate outside unions?

A. State that again, please.

Q. Is it only your opinion that the only purpose of the Michiana was to eliminate the C. I. O.?

Mr. Seebirt: We are objecting. He could not answer that question. He does not know what the opinions of several hundred other people may be.

Q. (By Trial Examiner Dudley): Well, was it
213 your opinion that that was the purpose?

A. That is right.

Q. Was that a purpose or was that the purpose?

A. A purpose.

* * * * * * * * * *

Q. But the classification that they submitted,
217 was that a new classification or was that a statement of the present classification?

A. A statement of their present classification there, I assume. However, we accepted this classification with the understanding that there could be changes made in it, and there have been several changes at our request made in the classification since that time.

* * * * * * * * * *

Q. Now, at the time the first meeting of the
219 Michiana Association took place, had you at that time been transferred to your present position?

A. Yes.

* * * * * * * * * *

RE-CROSS EXAMINATION

* * * * * * * * * *

Q. Had you had any discussion of any kind with
223 any people who had a higher position than you, with the company?

A. Not that I know of, no.

Q. Have you ever heard any of those gentlemen say or before that time had you ever heard any of those gentlemen saying anything against the C. I. O.?

A. No, sir.

Q. Or the A. F. of L.?

224 A. No, sir.

Q. Or any Independent union?

A. No, sir.

Q. Or for any Independent union?

A. No, sir.

. . . . . .

Q. Were you ever told what you ought to say

226 or not to say to any employees about labor unions?

A. I don't recall any such instructions.

Q. Did any of the supervisors there comment in any way about the newspaper reports or union activities?

A. Not that I remember.

Q. Now, I believe you said that on about May 18th, 1937 somebody showed you a petition that was being circulated, is that about right?

A. That is right. Approximately that time. I don't think I gave a definite date.

Q. As I remember it, you thought it was the day before you had that meeting at the lunch hour?

A. Yes.

Q. And that you thought was the day before

227 the meeting of May 20th?

A. That is right.

Q. Who was it that gave you this petition?

A. This fellow was a lineman from South Bend, and his first name is Jack. Now, that is all I can tell you. I don't know what his last name is.

Q. Where did this happen?

A. As I recall it was in the garage of the company building in Benton Harbor.

. . . . . .

Q. Now, tell me this, what happened next in

231 regard to this Association?

A. Well, the next day they—

Q. Before you go on with that, did you have any conferences that evening with anybody?

A. No.

Q. Did you mention this petition to Mr. McKinder?

A. Mr. McKinder was not there at the time. He was sick. That is how I happened to be on the job.

Q. It was during his illness?

A. Yes, sir.

Q. Were you the acting general line foreman?

A. That is right.

Q. In Mr. McKinder's absence?

A. That is right.

Q. And was your immediate superior Mr. Turner?

A. Mr. Rohl. Mr. Turner was also off at that time.

Q. Oh, I see. What was Mr. Rohl's position then?

A. He was division superintendent.

Q. Did you discuss it with Mr. Rohl?

A. Not that I recall.

Q. Did you tell him that the men had come around with a petition?

A. I believe I did talk to him about the peti-
232 tion. I believe he asked me if I knew about it, about such a petition.

Q. What did he say, do you remember?

A. No, I don't remember what he said in regard to it.

Q. Well, did he say that he had heard there was such a petition?

A. Yes, he said, he asked me if I knew about it.

Q. Did he say anything about what kind of a petition it was?

A. He did not.

Q. What did you tell him?

A. I told him that this fellow had came up from South Bend with the petition, and they were planning on forming an association, and they wanted to find out if we were interested in going along with them, and that is about all I can remember that we talked about it. He didn't have any comments to make on that, that I recall.

* * * * * * * * * *

Q. I think you said that you were selected to go
238 down to the meeting that night?
A. That is right.
Q. Were you selected at noon?
A. That is right.
Q. Did somebody nominate you?
A. That is right.
Q. Do you know who nominated you?
A. I do not.

* * * * * * * * * * *

GEORGE S. HOLMES,

a witness called by and on behalf of the National
255 Labor Relations Board, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

* * * * * * * * * * *

Q. (By Mr. Reynolds): Did you hear Mr.
256 Edgell's testimony as to your occupation?
A. Yes, sir.
Q. Would you say his description is incorrect?
A. No, he said, I believe, if I remember correctly, that I was the safety director. Temporarily I am working in safety in the distribution department.
Q. What is your job in the safety work?
A. I conduct meetings amongst the line crews, monthly in groups, and meetings of that kind. I attend meetings over the districts too, in the line department, safety meetings.
Q. How long have you been doing the safety work?
A. I would say approximately three years.
Q. Three years. And are you a straight salaried man—
A. Yes, sir.
Q. Or hourly paid?
A. Salaried; monthly.
Q. You say you conduct monthly classes?
A. Monthly safety meetings.
Q. Now, is that just one meeting or do you go to each division for the purpose of holding a meeting?

A. Well, here in South Bend I will hold an average of five or six a month, fifteen to eighteen or twenty men in a group.

Q. And any other meetings outside of South Bend?

A. No, I attend meetings in Benton Harbor and
257 Butler, Elkhart, Buchanan, one meeting in each month in each of those districts.

Q. Does anyone assist you in conducting these meetings?

A. What do you mean, in South Bend?

Q. Yes.

A. I conduct the meetings in South Bend, but I don't conduct those in the districts. I merely sit in.

Q. Who conducts those in the districts?

A. In Buchanan Mr. Morley conducts them.

Q. Who is Mr. Morley?

A. Mr. Morley is in the meter department at Buchanan.

Q. What is his job? Does he read meters?

A. No, I don't believe so, although I couldn't say exactly what his duties are. At Benton Harbor Mr. Rohl conducts the meetings usually.

Q. Mr. Rohl, the Division Superintendent?

A. That is right.

Q. And you are present at those meetings however?

A. That is right.

Q. What is your function in the meeting if Mr. Rohl conducts it?

A. I visit the different crews from the safety standpoint and try to get them to prevent accidents.

Q. Do you give the crews instructions about safety measures to take?

A. In the meetings in South Bend I may
258 enumerate the various hazards that are involved in their work. I don't know whether you would classify that as instruction or not.

Q. When you go out on the crews to talk to the men there, what do you tell them?

A. I very seldom tell them anything. I usually watch

to see that they have rubber goods on, on the line, and certain things such as that.

Q. You observe to see whether the safety regulations are being followed?

A. That is right.

Q. And on the occasions where they are not being followed, what action do you take, if there are such occasions?

A. Oh, sometimes, I call it to their attention, although I have not stressed that very much with them, and if it is a violation where I think that there might accident creep in, I will probably report it to the general line foreman so that he can get that corrected.

Q. How long have you been employed by the Indiana & Michigan Company, Mr. Holmes?

A. I believe my employment starts in May, 1926.

Q. 1926?

A. I believe that is it.

Q. Prior to the time you became active in the safety work, I believe you stated that you were a distribu-
259 tion engineer, Class A?

A. That is right.

Q. What were your duties as a distribution engineer, Class A?

A. Laying out distribution lines and construction of those lines.

Q. Did you have supervision over any other employees in that work?

A. No, none whatsoever.

Q. Where was your headquarters at that time?

A. South Bend, at the Colfax Plant.

Q. Did you have an office of your own?

A. I have a desk in a large room where there is, I should say, twenty other employees.

Q. At the present time do you still have the same type of facilities, headquarters?

A. If I get there before they get to the desk. We are rather crowded and it is first there first served.

Q. On these safety inspection trips that you make, are

you ever accompanied by any other employees officials of the company?

A. That is, you mean on these trips to the districts where they are holding the monthly safety meetings?

Q. Yes.

A. Yes.

260 Q. Who occasionally or habitually accompanies you on those trips?

A. I wouldn't say habitually, but usually Mr. Thornton goes along.

Q. Who is Mr. Thornton?

A. He is, I believe personnel director, either safety director or personnel director, I wouldn't say which is his job.

Q. Is he your superior or are you on equal rating, so far as your duties are concerned?

A. I am merely part of the line department to help them in the safety. I am directly under Mr. Dequine and in no way under Mr. Thornton.

Q. Your immediate superior is Mr. Dequine?

A. That is right.

Q. Just what is his occupation?

A. He is superintendent of distribution and transmission.

Q. For the whole system?

A. Yes, sir, that is right.

Q. Do you have occasion to attend any safety meetings elsewhere besides on the company property?

A. Not that I recall.

Q. Do you ever attend any national conferences or conventions?

A. That is right, national safety congress.

261 Q. Where was the last one held?

A. The Silver Jubilee National Safety Congress in Chicago, October 10th to 14th, if my memory serves me right.

Q. Of this year?

A. That is right.

Q. Did you attend that?

A. I did.
Q. Did the company pay your expenses to that meeting?
A. They did.
Q. Are you connected in any way with the Michiana Electrical Utility Workers Association?
A. I am.
Q. What is your job?
A. President.
Q. When did this organization first come to your knowledge?
A. Subsequently to this May 20th meeting.
Q. You knew nothing about it until after May 20th?
A. That was the first I knew of it.
Q. How did it occur that you knew nothing about it at that time?
A. I was out of the State.
Q. You were on vacation at the time?
A. No, sir, I was attending my mother-in-law's funeral in Illinois.

262 Q. And what was the first intimation you received about the new organization?
A. As I recall, when I came back some of the fellows stopped me in the hall and says, "You got a job on your hands."
Q. Who told you that, do you remember?
A. I don't remember which one, but I know several of the fellows mentioned that fact the Monday morning after I got back.
Q. And what did you find out further about what they were talking of?
A. Well, they said at this meeting that I was appointed temporary chairman.
Q. Temporary chairman?
A. That is right.
Q. What did you do after you found that out?
A. I began to ask around and to inquire what I had inherited.
Q. What did you do in that regard?
A. I just don't remember specifically. It was all new

to me in the work, and in the beginning I inquired around what I was in for.

Q. What did you find out?

A. That the employees were planning to form an Association and that I believe, at that time, Mr. Jernegan had been employed and as I remember I contacted Mr. Jernegan.

Q. When did you first talk to Mr. Jernegan?

263 A. Soon after that. I wouldn't know the exact date.

Q. Well, at that time you were not a member of the Association, were you?

A. No, I don't believe I was.

Q. You were president of the Association, but not yet a member?

A. No, not president; temporary chairman.

Q. Temporary chairman?

A. That is right.

Q. Do you recall about when you had this conversation with Attorney Jernegan?

A. No, I don't because we had several subsequent meetings then in forming the by-laws, and I don't recall.

Q. Was it soon after you learned that you had been designated as temporary chairman?

A. Yes, in the course of the next few days.

Q. What was your conversation with Mr. Jernegan?

A. I wouldn't have the slightest idea now.

Q. You don't recall?

A. Of course, it had to pertain to this work of getting this started. Outside of that, that is all I know.

Q. At the time you went to attorney Jernegan, you didn't know anything about the organization, did you?

A. Well, the fellows told me after I came back, they informed me as I said, I believe, that they were

264 forming such an Association and asked me to take the chairmanship and form the by-laws.

Q. Did they tell you what the purpose of the Association was?

A. I can't recall directly whether they said that or not.

Q. At the time you talked to Attorney Jernegan, did

you have any clear idea in mind as to what the Association was to be?

A. Well, there had been various things from time to time had come out, what was back of the Association.

Q. Well, what was that? I want to know what you found out.

A. Well, there were several reasons; outside organizations coming in creating a disturbance and jeopardizing the present working conditions they had, and I don't know this but by hearsay, the amount of dues would be perhaps three or four dollars, that for a quarter in an Independent Association they could get just as much as they could by paying three or four dollars a month to some outside organization, and in addition to that it would provide a clear channel whereby an employee could take a grievance or anything up to the head of the company.

Q. You had those things in mind when you first went to Attorney Jernegan?

A. Well, I suppose so, because I had always been more or less conversant in labor matters, anyway, from
265 reading the newspapers and periodicals.

Q. Well, what did you do when you went to Attorney Jernegan, what was the subject of the conversation?

A. I don't remember exactly, but I suppose it was to arrange a meeting place to get these different representatives together that were to represent the divisions in different parts of the country and get started forming the by-laws.

Q. You knew at that time that there had already been a meeting or two, did you not?

A. Not until I came back, and then by hearsay I was told about it.

Q. Did you learn how you happened to be selected as acting chairman?

A. As far as I know, it was by my name being put up there on the floor of the meeting of May 20th.

* * * * * * * * * *

Q. Well, do the minutes of the meeting indicate
266 who put your name up?

A. I didn't even notice in here who did. It says the following nominations were presented for election of chairman, Mr. E. Collins, Mr. George Holmes, Mr. N. Lambert. It doesn't state there so far who placed my name in nomination.

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Q. What was your activity in regard to this
268 organization after you had this first conversation with Mr. Jernegan?

A. Trying to compile the by-laws and then in the meetings with the representatives and Mr. Jernegan they would raise objections to what was placed in them or corrections, so as to have a representative view of the employees.

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Q. (By Mr. Reynolds): I show you Board's
279 Exhibit No. 10 which has just been marked for identification and ask you if you recognize that and know what it is?

A. Well, obviously I could not identify this word for word unless I had plenty of time. In general appearance—

Mr. Seebirt: Since we have got one in the record, why not offer the contract in the record? Isn't there one in the record?

Mr. Reynolds: This is not the present contract. That is the reason I am asking him to identify it.

The Witness: It would appear that this is the proposed working agreement that we submitted, but of course, I cannot identify it word for word without sufficient time.

Q. (By Mr. Reynolds): Was that contract ever accepted?

A. As I remember, there were modifications made of the original proposed working agreement.

Q. The modification being the present contract?

A. The present contract is what we finally arrived at.

Q. There was no contract then, until the present contract was entered into?

A. Not that I recall.

Q. Do you recall having presented a copy of that contract to the management?

A. Yes, we presented a proposed working agreement to them.

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Q. (By Mr. Reynolds): Mr. Holmes, in the
280 summer of 1937 you began some correspondence with the Regional Office of the Labor Board, did you not?

A. That is, you mean at Indianapolis?

Q. No, in Chicago.

A. First, I wrote, I believe, to Indianapolis, and then to Chicago.

Q. What caused you to write to the Labor Board?

A. To have them inform us what was the correct procedure under the Wagner Act to go about forming a union.

Q. Well, did you write later in regard to any
281 other subject?

A. As I recall, I had a conversation by telephone with them and I wrote once or twice, I forget which. However, that is all in the record.

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Q. (By Mr. Reynolds): I show you Board's Exhibit No. 11, for identification, and ask you if you recognize that letter?

A. Yes, sir.

Q. Does that refresh your recollection about your purpose in writing?

A. I didn't read the entire—now, what was your question, please?

Q. What is that letter, I want to ask that.

A. First it is a letter accompanying material that Mr. Williams asked for when he was out at my house.

Q. Who is Mr. Williams?

A. From the Labor Board out of Chicago, the
282 Regional Board.

Q. And in this letter you spoke of certification, did you not, of the Michiana?

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Q. (By Mr. Reynolds): Why did you feel it necessary to go to the Labor Board for certification of the Michiana?

A. By certification do you refer to my reference to an election?

Q. Yes.

A. Well, being in the dark with regard to the National Labor Act, I wanted to comply strictly with the law,
283 and being in the dark I had to go to them for information where I should be able to get correct guidance.

Q. Had you had any discussion with the company about Labor Board action?

A. None whatsoever.

* * * * * * * * * *

Q. (By Mr. Reynolds): I now show you Board's Exhibit No. 12, for identification and ask you what that is?

A. Apparently it is a copy of the list of the employees who had signed application cards for membership in the Association.

Q. Did you have any part in the preparation or did you instruct others to prepare this list?

A. That list?

Q. Yes.

A. I believe I instructed Miss Carlson to do that.

Q. And at Mr. Williams' request, was it?

A. Well, he wanted a list of the employees. I believe it was at his request.

Q. This was a list of the membership as of the
284 time you had it prepared, is that correct?

A. I believe, as near as I remember, that is correct.

Q. It bears date August 21st, 1937. You say that that is the time, around that time—

A. Yes, as near as I remember.

Q. —that the list was prepared?

A. Yes, as near as I remember, that would be.

Q. Miss Carlson was at that time acting as secretary?

A. Stenographer.

Q. Stenographer?

A. Yes, for the general council.

Q. Had she been in any other capacity besides that before she did this work?

A. Not while I was connected. Now, I don't know in that meeting of May 20th whether she had any connection or not, but as far as I know, that is all.

(The document was handed to counsel for respondent.)

Mr. Seebirt: We have no objection.

Trial Examiner Dudley: There being no objection, I admit Board's Exhibit 12 as offered.

(The document heretofore marked "Board's Exhibit No. 12" for identification, was received in evidence.)

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Q. Have you ever solicited any members?

290 A. Not according to my knowledge, not as far as I know.

Q. Have you ever collected any dues?

A. I have accepted dues on two or three occasions, by their request only.

Q. But you never solicited any dues?

A. Not that I remember.

Q. Never urged any of your members to pay up their dues?

A. Yes, I think I have mentioned that to them.

Q. Now, after you became temporary chairman of the Michiana Association were you later elected to any other office in the Association?

A. When the organization was finally completed I was elected president of it.

Q. How much of your time did you devote to

291 work of the Association during those early days of its existence?

A. Too many night hours to it.

Q. Did you spend any of the time during the day on that work?

A. Not so far as I recall. Our meetings were held in

Mr. Jernegan's office, several of them, as the records show, and there is where the bulk of the work was done, in committee, and I did the bulk of the rest of the work at home at night.

Q. Who prepared the proposed working agreement and the by-laws of the Association?

A. I did quite a bit of it.

Q. What assistance did you have from any others?

A. You mean from individuals?

Q. Yes.

A. The only other help that I had was in the meeting with Mr. Jernegan and the representatives, they would discuss what I had prepared and make corrections or suggested changes.

Q. In your by-laws, Mr. Holmes, there is one statement to the effect that there should be no stoppages of work, no strikes.

A. I believe that is right.

Q. What caused you to insert that provision in your by-laws?

A. I and quite a few of the other fellows are opposed to having work interrupted by strike, something
292 that you will never regain again.

* * * * * * * * * * *

The Witness: In the end, if a strike is called
293 public opinion is the final arbiter, and with a public utility, where we render service to the public, if a strike were called we would not have merely the company's ill-will but we would have it of the entire community which we serve.

Q. (By Mr. Reynolds): Therefore that is one instrument of economic strength that the Michiana Association would never use and could not use according to its own constitution and by-laws, is that right?

A. Not under the present agreement, unless that was changed.

Q. What is the provision in the present agreement with reference to any difficulties that cannot be settled amicably?

A. That can be read directly from the record. I don't recall it.

Q. Well, you have an arbitration provision, do you not?

A. I believe there is, yes.

294 Q. Has that arbitration provision ever been invoked, has it ever been used?

A. Not as yet.

• • • • • • • • • • •

Q. (By Mr. Reynolds): I now show you Board's

296 Exhibit No. 13, for identification and ask you what that is?

A. From this cursory examination it apparently is a copy of the classification of the employees and a copy of the working agreement between the Association and the company.

Q. That is now in effect?

A. Yes.

Q. This agreement bears date of February 5th, 1938.

A. That is right.

Q. Is that the effective date of this contract?

A. I believe that is right.

• • • • • • • • • • •

Q. Have you from time to time met with officers

298 and officials of the company on behalf of the Michiana Association, Mr. Holmes?

A. That is rght.

• • • • • • • • • • •

CROSS EXAMINATION

• • • • • • • • • • •

Q. (By Mr. Deahl): Now, in those minutes it is

301 mentioned that James Marsh suggested that the association be formed. Do you know James Marsh?

A. I know a Jim Marsh. I suppose it is the same fellow.

Q. Do you know what position he occupies with

302 the company?

A. As I remember, he is a sub-station operator.

Q. Where?

A. I believe he is a utility operator.

Q. Do you know where,—where he is stationed?

A. Well, as I remember, I wouldn't be certain about it, but as I remember, he is used as a utility operator in different sub-stations.

• • • • • • • • • •

Q. Now, those minutes also indicate action was taken by the chairman to appoint a committee for the purpose of drafting by-laws. You were the chairman, as I understand it, you were made chairman.

A. Temporary chairman.

Q. Temporary chairman?

A. Yes, sir.

Q. Of that meeting. Did you undertake, as temporary chairman, to appoint such a committee?

A. I believe that is the procedure I followed.

Q. Do you know whether or not you appointed that committee independent of suggestions from any one else or whether you conferred with others in the appointment?

A. As I remember, I asked the representatives, that is, the employees in the various districts to make their
303 own choice.

Q. That is your best recollection?

A. That is right, so that I wouldn't dominate the picture, it would be up to them to make their own choice.

Q. Then following the naming of these persons, what action was taken toward the drafting of the by-laws? What was the first step?

A. I can't recall just the minute steps that were followed in there. We got the committee—as soon as the committee was together, we began meeting in Mr. Jernegan's office, as I stated before.

Q. Does your record there show who the members of this committee were?

A. What page is that on?

Q. I am not certain myself. That was the reason I was asking you. I might suggest, however, that you look at the minutes of the meeting held on May 28th.

A. I have them.

Q. Do you have any list of the members of that committee, independent of what appears in the minutes?

A. Not that I know of. This is the only list that I have.

Q. Do you recall how many members there were on the committee?

A. No. There is 14 listed here. That is as close as my memory goes.

304 Q. Then I direct your attention to the minutes of the meeting held June 4th, which purports to be minutes of a meeting of the committee, and there, I think, 16 names are listed.

A. Yes, I believe there are 16.

Q. What is your best recollection as to whether that was the number on the committee or whether the number was more or less?

A. As I remember it, it varied slightly from meeting to meeting. There would be some of the fellows couldn't come and they might send another man in their place, or they might not.

Q. Were all the men that are named in the minutes of the meetings of May 28th, 1937, and June 4th, 1937, of the Association, were they, each and all, members of this by-laws committee?

A. As far as I remember, they were.

Q. How did you happen to call the meetings of the committee at the office of Mr. Jernegan?

A. Why, merely to save expense.

Q. Have you discussed the matter of a meeting with Mr. Jernegan prior to May 28th, the time of the first meeting?

A. Yes.

Q. And was that his suggestion or your suggestion?

A. I wouldn't be positive, but as I remember, he offered the service of his office there.

305 Q. Now, these minutes of the meetings of May 28th, 1937, and June 4th, 1937, and June 11th, 1937, and June 30th, 1937, the meetings that were held in Mr. Jernegan's office,—was Mr. Jernegan present at each of these meetings that was held in his office?

A. With the possible exception of one.

Q. Do you recall which one?

A. No, I don't.

Q. And when he was present, did he remain present throughout the deliberations of the committee at the meeting?

A. As far as I remember, he did.

Q. Did he participate in the deliberations?

A. In so far as he would pass on questions that we asked him.

Q. Do you recall whether or not at any of those meetings there was some question raised as to the eligibility of members in the Association?

A. I believe that came up.

Q. Let me refer you to the minutes of the meeting of June 4th, at the bottom of the second page.

306

It is there stated that it was again brought up as to who specifically the Wagner Act describes as a department head or official of a company. It is suggested that we lean away from rather than toward including department heads, to be on the safe side. It was questioned were foremen eligible. It was thought that they would be, but it was advised that they do not take too active a part in the organization, so as to make the men working under them feel the union was run by higher ups.

It was felt that the local group should be able to take care of this themselves, each small group being well enough acquainted with their own personnel.

It was suggested then that the only way to be sure about the department head and company official question, as the law is not specific, is to wait until some court was to make a ruling specifying a line of demarcation. Do you recall who it was that made those suggestions?

A. That is this statement about waiting until we—

Q. Yes.

A. As I remember, Mr. Jernegan so advised us.

Q. Do you recall whether in the discussion of the matter there were any members of the committee who undertook to express an opinion about it, or whether it

was a matter of the members of the committee seeking the opinion of Mr. Jernegan about it?

307 A. Well, naturally, they would be more in the dark than Mr. Jernegan would, with regard to the Wagner Act.

Q. And the purpose of meeting with Mr. Jernegan was to have his advice on just such matters?

A. That is right, so we would comply with the law.

Q. Then it is your best recollection, is it, Mr. Holmes, that this suggested course of action came from Mr. Jernegan and not from any member of the committee?

A. That is right.

Q. Now, these meetings here of May 28th, June 4th, June 11th,—May 28th and June 4th, that I have referred to indicate that the purpose was to consider and take action on the matter of adopting a set of by-laws. Was there any work done in the preparation of the by-laws independent of any of these meetings?

A. You mean was all the drafting of the by-laws done specifically at these meetings?

Q. Yes.

A. I prepared some in advance and then they were gone over at the meetings.

Q. Can you give us an idea of approximately how much time you spent in drafting proposed by-laws?

A. Well, it would be only a guess, but I would say the larger portion of my spare time, covering a period

308 of about two or three weeks.

Q. And you are now referring, when you say spare time, you are referring to your evenings?

A. That is right.

Q. Then it is your best recollection that for a period of two or three weeks you spent most of your evenings in the work of drafting a proposed set of by-laws. Was there anyone who assisted you during those evenings at that work?

A. No.

Q. Was there anyone that made any suggestions to you as you were doing that work, independent of those meetings you held in Mr. Jernegan's office?

A. No.

Q. Was there anyone connected with the management of the Indiana and Michigan Electric Company who made any suggestion to you at any time with respect to those by-laws and any provisions to be contained therein?

A. No. That is my own work.

Q. Now, with respect to this working agreement—

Mr. Seebirt: Pardon me.

Q. (By Mr. Deahl): Do you have a copy of the by-laws with you there?

A. Yes, I do.

Q. I direct your attention to paragraph B of Article 6, wherein it is stated that since the business we as
309 employees are engaged in is a public utility we should do our part to provide an uninterrupted service to the public at all times, whch if withheld would work a hardship on the public.

Q. Do you know who is responsible for that provision in the by-laws?

A. I suppose I am, primarily responsible for it.

Q. Does that express your thoughts with respect to that matter?

A. Yes, I believe that is right in line with the answer I gave to a previous question by Mr. Reynolds.

* * * * * * * * * * *

Q. (By Mr. Deahl): I hand you now Respond-
310 ent's Exhibit No. 2 and ask you to state whether or not from your best knowledge and recollection that is a true, correct and complete copy of a letter written to you by Mr. Ralph Jernegan, dated December 1, 1937?

A. As far as I remember, that is a true copy.

* * * * * * * * * * *

Q. (By Mr. Deahl): Now, that letter refers to
311 a statement of Mr. Jernegan which he enclosed for services rendered the Association in the amount of $100.00, legal services. Do you know whether or not that has been paid?

A. It has.

Q. Now, according to the records Mr. William E. Voor subsequently became the attorney for the company. Do you recall approximately when that was?

A. Do you mean attorney for the company?

Q. I beg your pardon; attorney for the Association.

A. I believe it was sometime around the beginning of September, 1937.

Q. Before I get into that, who was it that paid Mr. Jernegan?

A. It would be a check signed by myself and Mr. Collins.

Q. That is an Association check?

A. That is right.

Q. Was that check drawn on funds belonging exclusively to the Association?

A. That is right.

312 Q. And was there any contribution to those funds made by the Indiana & Michigan Electric Company?

A. There was not.

Q. Or anyone identified with the management of the Indiana & Michigan Electric Company?

A. None whatsoever.

Q. Were any of the funds in the treasury of your association at any time derived from any source other than the collection of membership dues?

A. I will qualify it to this extent, membership dues plus the dollar initiation.

Q. Plus the dollar initiation?

A. That is right.

Q. Your answer is what?

A. There was none outside of that.

Q. Now, I direct your attention to a letter that appears in your file dated August 3. It may refresh your recollection as to the matter of Mr. Voor's employment.

A. To whom is the letter addressed?

Q. It is sort of a letter that—I have it indicated here as a circular letter, and I presume it is one you sent out to your members?

A. Oh, yes, I have it.

Q. Does that refresh your recollection as to the
313 time that Mr. Voor was retained as attorney for the Association?

A. Let me be sure that I have the same copy that you are referring to. Is this the one that is signed by R. E. Denman, secretary?

. . . . . .

Q. (By Mr. Deahl): Just a minute. Let me see if I can't help you. Do you find anything there that refreshes your recollection as to the time when the association employed Mr. Voor?

A. Well, under—

Q. The approximate time.

A. Under this date of September 30th there is a paragraph that refers specifically to the hiring of Mr. Voor.

Q. Does that refresh your recollection that the employment was about that time?

A. Yes.

Q. Do you recall the circumstances of that employment?

A. Well, I think I do.

Q. Would you relate them to the Examiner?

314 A. Mr. Jernegan's services were satisfactory, but whenever we needed him he was not available. He was playing golf in Northern Michigan, and I would have to correspond with him by telephone, which is certainly very unsatisfactory when you want an opinion on something, you would have to send a message out to him on the golf course.

I didn't know many attorneys, there were practically no attorneys in South Bend except one that I had known because I had had some private business with him, Mr. Huguenard. I went to him and at first he said he would be glad to take our work, and then after consulting with him for perhaps half an hour or so he decided he could not take the case inasmuch as he was employed, I believe, by the Northern Indiana Public Service Corporation here on the management side, he could not conscientiously take

our case, so not knowing where else to go I asked him and he recommended Mr. Voor.

Q. Was that the only suggestion you had re-
315 ceived with reference to the employment of Mr. Voor as attorney for the Association?

A. I didn't know that such a man existed before that.

Q. Well, was that the only suggestion?

A. That is right.

Q. Did you then go from Mr. Huguenard's office to Mr. Voor's office?

A. I believe so.

Q. That is in the same building, is it not?

A. Yes.

318 • • • • • • • • •

Q. (By Mr. Deahl): Is Mr. Voor still acting as the attorney for your association?

A. He is, with the exception of today, he is down to Indianapolis.

Q. And does the Association pay him for the legal services he renders to the Association?

A. We do.

Q. And are those services paid for by checks drawn upon the funds of the Association?

A. That is right.

Q. And these funds are acquired in the manner that you have testified heretofore?

A. They are.

Q. Now, I think it was about December of 1937 the company, the Indiana & Michigan Electric Company, submitted to your Association a writing entitled "Declaration of Policy." I would like to have you refer
319 to that part of your record there that may refresh your recollection?

A. I forget under what date that was.

Q. That was along after December 1st and prior to January 6th.

A. I believe I have it here.

Q. Can you refresh your recollection from the records before you there as to when it was or approximately

when it was that this declaration of intention or declaration of policy was called to your attention?

A. I believe, if I recall correctly, it was before the signing of the working agreement.

Q. Do you recall the circumstance of its being called to your attention?

A. No, I don't.

Q. Do you recall a meeting in the office of the company for the purpose of discussing the matter?

A. Well, out of the four or five times that we met with them, I am not just clear what transpired at each meeting.

Q. Do you recall any meeting at which this declaration of policy was discussed, any meeting of your Association?

A. I would have to let the minutes of the meetings speak for themselves.

Q. You do recall a declaration of policy?

A. Yes, I recall that.

320 Q. Do you recall the action that your Association took on that declaration of policy?

A. I wouldn't recall without having read the minutes again.

Q. Do you recall whether or not your Association acquiesced in it or rejected it?

A. Well, there again I don't know the—I don't recall the minute transactions that took place.

Q. Do you recall the results, that is, the final action that was taken with respect to it?

A. I have not refreshed my mind on this since that transpired, and for that reason, that is why, I am so hazy on it.

Q. I think your record before you shows a meeting in the office of the company—pardon me, just a moment.

Do you have in your records before you a copy of a letter, dated December 20th, 1937?

A. Addressed to the—

Q. Addressed to the Indiana & Michigan Electric Company?

A. I have.

Q. And signed by the Michiana Electrical Utility Workers Association?

A. I have.

Q. Does that refresh your recollection any with respect to this subject of interrogation?

A. Yes, it does.

Q. What is your recollection now as to the ac-
321 tion that was taken by the Association?

A. As I recall, the Association refused acceptance of this working agreement, unless the—

Q. You mean, declaration of policy?

A. Declaration of policy, unless the classification could be worked out.

Q. And that declaration of policy was prepared by the company and submitted to the Association?

A. That is right.

Q. Did the Association assist in any manner in the preparation of that declaration of policy, in so far as you know?

A. No.

Q. But you do recall distinctly that the Association declined to acquiesce in the declaration of policy?

A. That is right.

Q. And was it or was it not the position of your Association that there should be a working agreement instead of a declaration of policy?

A. That is right.

Q. And what, if any, steps were then taken toward the drafting of a working agreement?

A. You mean on the part of the Association?

Q. Either on the part of the Association or the company, in so far as you may know?

A. The Association submitted a proposed work-
322 ing agreement to the company.

Q. Was that the first draft that was made of a working agreement?

A. That was submitted to them, you mean?

Q. That was the subject of negotiation and discussion between your Association and the company?

A. That is, you mean that the proposed agreement

that we submitted to the company, was that the only proposed agreement that we worked up?

Q. That is right.

A. That is right, as far as I remember.

Q. Was there but one draft made of the working agreement or was there more than one draft?

A. As I recall, I wouldn't be positive, and as I say, I haven't refreshed my mind—

Q. Refer to your minutes of a meeting in Mr. Jernegan's office on June 30th, 1937, and see if there is anything there that may refresh your recollection with respect to the matter.

Well, it is the sixth and seventh paragraphs.

A. Yes, on the first page here, the sixth and seven paragraphs, it refers to that working agreement.

Q. Does that refresh your recollection now as to when the first steps may have been taken with respect to the drafting of the working agreement?

A. Yes, from this we were in the preparation
323 of working out a working agreement to submit.

Q. That is, on June 30th you were engaged in the drafting of a working agreement?

A. I believe that is right.

Q. And that was prior to the time the company submitted to you your declaration of policy?

A. I believe that is right.

Q. Now, do you recall who it was that did the first work with respect to the drafting of that proposed working agreement?

A. I wouldn't be positive, but, as I recall, the same procedure was followed on that as on the by-laws.

Q. That is, that you were the one who did the first work?

A. A considerable portion of it. As I recall, it was then hashed over in the meeting in Mr. Jernegan's office.

Q. Prior to any actual work of drafting, did you make any investigation to ascertain the form of such agreements in use elsewhere?

A. I had some copies of some other working agreements.

Q. Do you recall where you obtained those copies?

A. No, I don't offhand.

Q. Do you know whether or not they came from any one identified in the management of the Indiana & Michigan Electric Company?

A. No, I got them from outside individuals, as
324 I remember it.

• • • • • • • • • • •

Q. Now, do you recall when it was that you or
325 the Association had a working agreement that it was ready to present to the company?

A. No, I wouldn't know that date. The records should show that.

Q. You might refer to your minutes of September 28th. To refresh your recollection, let me ask you if it wasn't on July 16th that you, as chairman of the general council of the Association, called at the office of the company and delivered to Mr. Calvert a proposed agreement between the company and the Association?

A. I do recall making such a mission, but I don't recall the exact date.

Q. Well, do you recall that it was approximately the date of July 16th?

A. It would be in the neighborhood of that date, but I wouldn't recall it exactly.

Q. Now, do you recall what action the company
326 took with respect to that presentation?

A. The first draft was not accepted as presented, but the sequence of the discussions back and forth between the Association and the management I don't recall their order.

• • • • • • • • • • •

Q. (By Mr. Deahl): Now, just state in your own
327 words and as best you recall what steps were taken from that time up until the time of February 5th, relative to the signing of a working agreement?

A. I don't recall just the actual number of meetings but there were several meetings held between the Association and the management.

Q. And what was the general character of the meetings?

A. Discussing the provisions that would go into the working agreement.

Q. Were there differences of viewpoint expressed in those meetings with respect to the provisions to go in this agreement?

A. Yes, there was contention between the company and the Association, claims of the Association the company did not want to grant.

Q. And the result that was achieved and the final draft of the working agreement, would you say that that embodied the viewpoint of neither the Association nor the company alone, but did embody the viewpoint of both?

A. I would say it was more or less a compro-
328 mise between our extreme contentions.

Q. It is your opinion as one who was present and participated in these negotiations that the final draft is in the nature of a compromise?

A. That is right.

Q. Between the positions of the company and the Association?

A. That is right.

Q. Now, Miss Carlson, as I understand, has acted as a stenographer for the Association?

A. Yes, for the general council.

Q. Is she still acting in that capacity?

A. That is right.

Q. And when does she do the Association's work, if you know, with respect to her working hours?

A. During her evenings, sometimes on holidays and over the week-ends.

Q. Is she paid for the service she renders the Association?

A. She is.

Q. And is she paid from the funds of the Association for her services?

A. She is.

Q. Do you recall a meeting in the office of the company, one you had called for the purpose of having the

company recognize your Association as the bargaining agency for the company employees?

A. I believe I do recall such a meeting.

329 Q. Do you recall at that time you were asked the question as to whether or not your Association was seeking recognition as the bargaining agency for just its members or all the employees of the Indiana and Michigan Electric Company?

A. I believe some such question was asked us.

Q. Do you recall what was said by you or anyone else representing the company in response to that inquiry?

A. I believe—

Q. To refresh your recollection, I believe it does appear in there in the minutes that the statement was made that you didn't know at the time and would have to find out?

A. I believe I stated that we didn't know, we would have to consult with our attorney.

Q. Yes, now then after the meeting, what if anything did you do to ascertain what the answer to that question should be? Did you go to see Mr. Jernegan for instance?

A. I don't recall just what was the next immediate move that was made.

Q. To refresh your recollection, don't you recall discussing the matter with Mr. Jernegan and Mr. Jernegan suggesting that you write to the Division of Labor of the State of Indiana?

A. That is right.

Q. You recall that now?

A. Yes, I do.

330 Q. Did you write such a letter?

A. Yes. He stated, as I recall it to write to the State Labor Board at Indianapolis, which I did.

Q. Do you recall the reply that you received, the substance of it?

A. In substance they said that they had no jurisdiction in the case inasmuch as the company operated in two States, and that they suggested that we get in touch with the Regional Director at Chicago.

Q. Did you undertake to contact the Regional Director of the National Labor Relations Board at Chicago then?

A. I did.

Q. Was that the first contact you or your Association had ever had with the National Labor Relations Board?

A. Yes, as far as I remember.

Q. Following that the National Labor Relations Board asked you for certain data pertaining to the Association?

A. Yes.

Q. You furnished that data?

A. Anything that they asked for.

Q. Then you were subsequently advised that there was a litigation in progress?

A. Some complaint or something, I forget how it was worded.

* * * * * * * * * *

Q. Just state to the Examiner what the situa-
331 tion was with respect to solicitation of membership in Labor organizations among the employees of the Indiana & Michigan Electric Company, just prior to May 20th, 1937?

A. I don't know as I could make any definite assertions along that line, because I was not solicited by any outside union so I wouldn't know.

Q. Do you know whether or not prior to May 20th, 1937 there was any active effort on the part of organizers of the American Federation of Labor in the solicitation of the employees of the Indiana & Michigan Electric?

A. By outside organizations?

Q. Yes.

A. I heard considerable comment, but of course not having been directly contacted it would be merely hearsay.

Q. Did you hear talk among the employees to that effect?

A. Yes.

Q. Did that talk indicate that there was just a little activity or that there was some considerable activity?

A. Apparently there was considerable activity.

Q. And what was the nature of the discussion among the employees and the comments that they made with respect to it?

A. In general the substance of it was that they
332 did not want to be forced into an outside organization against their will, to pay dues which they considered excessive, in return for what they would get from joining such an organization.

Q. Did you hear at any time any discussion to the effect that it was the desire of the management of the Indiana & Michigan Electric Company that there be an inside union formed?

A. No.

Q. Was there anyone suggested to you at any time that the management of the company was promoting the organization of this Association?

A. No.

Q. Or that the management would be interested in seeing this Association succeed?

A. No.

* * * * * * * * *

Q. (By Mr. Deahl): I will withdraw the question
334 and put it this way: Did you have the thought that this Association was being organized in order to give the Indiana & Michigan Electric Company any advantage over its employees?

A. No, I don't see how it could.

335 Q. Or did you have in mind that it was being organized to protect and promote the rights of the employees exclusively?

A. I considered it was being formed by the employees for their own benefits, since it was their free will in doing so.

Q. Did you ever hear any complaints by the members of outside unions as to the privileges accorded them in the solicitations of membership in their unions?

A. No.

Q. Did you ever hear or do you know of any instance of discrimination of an employee of the Indiana & Michi-

gan Electric Company because of his membership in either the Association or an outside union?

A. No, I do not.

Q. Your Association has considered and acted upon many grievances of employees, has it not?

A. A considerable number. I don't know how many.

• • • • • • • • • • •

Q. Strike out the question. Among all the grievances that were presented to your Association for adjustment by employees, was there any grievance upon the theory that an employee had been discriminated against because of his union affiliation?

A. Not that I recall.

336 Q. Do you know of any instance of the company having urged, threatened, advised or coerced its employees to join or pay dues in the Association?

A. I do not.

Q. Do you know of any instance or of any act indicating any attempt on the part of the company to dominate or interfere with the administration of the affairs of the Association?

A. I do not.

Q. Do you know of any instance when any one identified with the management of the company has undertaken to question the employees concerning their union affiliations?

A. Not to my knowledge.

Q. Do you know of any instance where the company has warned its employees to refrain from belonging or remaining as members of an outside union?

A. I do not.

Q. Do you know of any instance where there was any pressure brought to bear on any employee of the Indiana & Michigan Electric Company to join your Association?

A. No, I do not.

Q. Do you know of any instance where the management exerted any such pressure?

A. No, I don't.

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Q. (By Mr. Deahl): I now hand you what has
337 been marked Respondent's Exhibit No. 3 and ask you to state, if you know, what it is?

(Handing document to witness.)

A. That was a circular letter passed on by the general council of the Association to acquaint the employees of the company with what the Association was doing.

Q. Who drafted the letter?

A. I did the bulk of the drafting and it was passed on by the general council.

Q. And was it put out on your direction? Did you authorize the mailing of it to the members of the Association?

A. The general council did.

Q. The general council did?

A. That is right.

Q. And you acted pursuant to that authorization?

A. That is right.

Q. And copies of that letter were sent to all the members of the Association, were they?

A. Approximately all of them. Now, I wouldn't be able to say definitely. This was passed on down to the divisions, and whether or not they functioned properly, I don't know.

Q. Oh, you did not use the mails for the pur-
338 pose of distribution?

A. The divisions did. I handed out the copies to the four divisions and let them take care of that themselves.

Q. In so far as you know, a copy of that letter came into the hands of substantially all the members of the Association?

A. Yes, the bulk of them. That was the intent of it. I can't say whether they did it.

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RE-DIRECT EXAMINATION

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Trial Examiner Dudley: I have a few questions,
341 Mr. Holmes. I am not sure that I told counsel, but

if I didn't, I might say now that if you think any of the questions I ask are objectionable, why, make your objection the same as you would for anybody else. I sometimes sustain objections to my own questions.

Q. (By Trial Examiner Dudley): Mr. Holmes, do you give any of your time now in working for the company at your job as engineer?

A. At the present time?

Q. Yes.

A. I am primarily interested in safety work.

Q. Well, what do you mean, primarily, or entirely?

A. I would say entirely.

Q. And who is your immediate superior in this safety work?

A. Mr. Dequine. I am working under him.

Q. How do you spell his name?

A. D-e-q-u-i-n-e.

Q. D-e-q-u-i-n-e?

A. Yes.

Mr. Seebirt: Capital Q-u-i-n-e?

The Witness: Without the capital.

Q. (By Trial Examiner Dudley): Now, you were a little uncertain on direct examination as to what Mr. Dequine did or does. Can you tell me more in detail as to what his position is with the company?

A. He is superintendent of distribution and transmission.

342

Q. And does that include the work of safety work?

A. The safety work within his department.

Q. You are only engaged in the safety work in distribution and transmission?

A. That is right.

Q. Who is your immediate superior when you are working as distribution engineer A?

A. I suppose that would be Mr. Miles, when I did do that, prior to taking up the safety work.

Q. How do you spell his name?

A. M-i-l-e-s.

Q. Is that the same Mr. Miles who attended the meeting of May 20th, 1937, of the Association?

A. I believe that is the same man.

Q. Is he the one that, I think, according to the minutes, made a motion that you be elected unanimously as chairman?

A. I believe, yes, I think that is right.

Q. Where is that,—Board's Exhibit 5?

(The document referred to was handed to the Trial Examiner.)

Q. Is that Mr. Frank Miles?

A. Yes.

Q. That appears to be the same man?

A. Yes.

343 Q. Now, I am not sure as to what the position you have as safety man means. You said you gave speeches here in the district, is that correct?

A. No, I believe you are misquoting me there.

Q. Well, I am sorry.

A. I will just briefly recite my entrance into this safety work.

Q. Yes.

A. About three years ago, I believe it was, we had two men killed, one on one day and one the following day, and we decided, or the company did, that they needed to bear down on safety work in the line department, where most of the hazards exist, and I was temporarily put on this safety work.

Q. Three years ago?

A. Approximately, I would say approximately three years ago, to visit crews, to observe whether they were exercising the necessary precautions to keep down accidents, and also, once a month we hold safety meetings with these men, and I, in addition to that, attend the distribution safety meetings in the various districts of the company.

Q. Now, what authority do you have to enforce the safety regulations?

A. I don't enforce anything. I am sort of an observer. I might call their attention to it, but it would be—

Q. Would you call yourself an inspector?

344 A. Yes, more on that order. It would be up to the foremen or those immediately in charge of the men to enforce their complaints with safety regulations.

Q. Now, suppose you were observing a crew working out on the road and you saw a man that was violating a rule. If his foreman were there, what would you do?

A. I would invariably call it to their foreman's attention.

Q. I see. Suppose the foreman did nothing about it, what would you do?

A. I would probably call it to the attention of the general foreman.

Q. Well, suppose he didn't do anything about it?

A. Well, I don't know, then we would just wait until something happened and then something would be done about it.

Q. Well, supposing when you saw this on the road, that the foreman wasn't there, what would you do about it?

A. Well, that would be rather a rare instance.

Q. Well, I thought that Mr. Edgell testified a

345 while ago that sometimes they were taken away?

A. Once in a while, that would be rare, though. If a foreman were taken away to some other place, that would be just for a short period.

Q. Would you on any occasion tell a man himself to put on his rubber gloves or say what he should do?

A. No. I would call it to his attention, but I wouldn't direct him to, because I haven't any authority.

Q. Do you ever make recommendations for discharging a man for repeated violations of the safety rules?

A. No, I have nothing to do with that.

Q. Are you ever asked about such matters?

A. No, I am not.

Q. You testified, I believe, that you traveled on many of your trips with Mr. Thornton?

A. That is right.

Q. What is Mr. Thornton's job?

A. I am not sure whether his official title is personnel director or safety director.

Q. Well, give your reasons for thinking both, then.

A. I know he does personnel and safety work both.

Q. Does he hire and fire people?

A. I don't think so.

Q. Does he make recommendations for hiring and firing of people?

A. I couldn't say as to that.

346 Q. What kind of personnel work does he do?

A. Well, I am not very well acquainted with him. He is over in the main office and I am over at Colfax.

Q. Does he travel with you when you go to watch the crews doing their work?

A. I would say that happens maybe once or twice a year, that is more or less by chance.

Q. When does he travel with you?

A. When we go to attend those distribution safety meetings in the district.

Q. Does he make speeches there?

A. Yes.

Q. Do you ever make a speech when he is present?

A. We have lantern slides and such as that and I will discuss them sometimes with the men.

Q. Do you have platforms at these meetings? Are they formal meetings?

A. Well, we meet in a group down in the basement or anywhere we can get.

Q. Do you sit up in front with Mr. Thornton and help preside?

A. No, I don't do that very often. I let him make the speeches.

Q. Does he supervise your work as a safety

347 man?

A. No, only merely cooperates, but I am not under him. I am in a different department. I am under Mr. Dequine.

Q. You said Mr. Thornton might be called a safety

director, but you were not sure. Does he do safety work in addition to traveling around?

A. He was safety director, but whether his title has been changed to personnel director I can't testify. I know he does both kinds of work.

Q. Does he have any supervision over your safety work?

A. Over mine?

Q. Yes.

A. No. I am directly accountable to Mr. Dequine.

Q. I think you testified a moment ago that you received a salary.

A. That is right.

Q. Will you tell us what that salary is?

A. $208.50.

Q. A month?

A. That is right.

Q. Do you know what a general foreman would get, for example?

A. No, I don't.

Q. How about a ground foreman or crew foreman, do you know what they get?

A. I think they get $1.15 an hour.

348 Q. How many hours are they supposed to work in the week or month?

A. 40 hours per week.

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351 Q. Now, Mr. Reynolds was asking you about your by-laws and what they meant regarding eligibility. Perhaps I can be more specific. Tell me, is a general foreman eligible in your organization as you understand the rules?

A. That is a debatable question. That question has been asked me repeatedly by different members of the Association, and I have always replied in substance that their guess is as good as mine, there has been no court action on the Wagner Labor Act.

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352 Q. Do you know whether or not any general foremen are members of the Association?

A. No, I don't know.

Q. How about an acting general foreman?

A. Well, it would be in the case of Mr. Edgell.

Q. Yes. Would an acting general foreman be eligible for membership?

A. Well, I don't know. I would say yes, as far as my interpretation of the Wagner Act goes.

Q. Well, I am just asking your opinion, what you think your rules mean?

A. Yes, I would think so.

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Q. When you came back, it was not finally or-
354 ganized, was it?

A. Oh, no, there was just the meeting of May 20th before I got the chairmanship.

Q. You proceeded with the organization?

A. That is right.

Q. What was your purpose in doing so?

A. I think I stated before they had expressed that much confidence in me and I thought I should go along
355 with them, as long as they had asked me to do the work.

Q. Were you in accord with their purposes?

A. I don't know whether I was familiar with all the purposes back of it.

Q. Well, with what of their purposes were you familiar?

A. I think I knew at the time just what that 25 cent dues meant, since we had no overhead expense that would care for our financial cost of the organization, and we would have just as much as we would with an outside organization that would require, on hearsay, anywhere from $3.00 to $4.00 per month in addition to our initiation fees, which would be substantially more than our dollar.

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Q. (By Trial Examiner Dudley): According to
358 the by-laws, which Mr. Seebirt has just read, you formed this Association in order to bargain collectively, is that true?

A. That is right.

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Q. Why did you come to an agreement on
369 raises before you came to your agreement on working conditions or classifications?

370 A. The classifications were a more involved job, and we agreed with the company if they would accept the classifications, there was considerable discussion about that, if they would accept that, we would let that come along, what they submitted, with the understanding that anybody who didn't like his or her classification could bring that up as a grievance and attempt to make an amicable settlement of that.

Q. Yes. Now, when you got your raises in pay in 1937, did you get a written agreement as to your raises in pay?

A. As I recall, the management did submit a statement of what would be the final raise, and that was submitted to the four divisions for their approval, for the majority approval of the four divisions' membership.

Q. And they approved it?

A. That is right.

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Q. Isn't that the most important thing you have
371 done on behalf of the Association?

A. The five cent raise?

Q. Yes.

A. Well, that is one thing. The grievances adjusted I would say is perhaps more important in some instances.

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Q. Tell me what it provided.

375 A. A five cent increase based on a 40 hour week, as I remember.

Q. For all employees?

A. I believe all excepting those receiving three hundred a month or more, and I believe there was an exception of some rural service men who were on a temporary basis. I believe that is it.

376 Q. Did you get an increase in pay as a result of it?

A. Yes, five cents on a 40 hour basis.

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377 Q. When you asked for your 15 per cent increase, what did the company say?

378 A. As I recall, at first they said that it would be out of line with what other companies were giving, that they couldn't comply with that request.

Q. And did they name any companies?

A. As I recall, they did.

Q. What companies?

A. I don't recall the specific ones, but it was several of the surrounding companies, within this immediate territory.

Q. All right. Then what did you say?

A. I don't just recall what our—it was bargained back and forth for some time, but I don't recall just what it was.

Q. Well, can you give us any argument you used?

A. For substantiating our 15 per cent?

Q. That is right.

A. Well, we, of course, as I said before, brought in the question of the increased cost of living.

Q. Did you bring in anything else?

A. There undoubtedly were other points brought up, but I don't recall just now what they were.

Q. Do you remember one of them?

A. No, I don't believe I do.

Q. All right, then what happened?

A. Well, we had in our meetings, we discussed with the employees, the membership, this raise.

Q. Who proposed the nickel raise?

A. I am not positive.

379 Q. Well, who do you think did?

A. I suppose it was the company.

Q. Why do you suppose that?

A. Well, as I remember, they submitted that offer to us. I believe, now, I am not positive, about this, I believe they submitted it to us and we took it to a vote of the membership in each of the four divisions, whether they

should reject or accept it, and by popular vote the majority accepted it.

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Q. Both counsel have asked you about your
381 position in regard to striking. Did I understand you to say that you thought you would never strike?

A. Oh, I can conceive of a time when a strike would be the last resort, but if it can't be adjusted otherwise the men striking, as well as the other side, are both going to lose.

Q. Now, give me an example of what you would conceive as a justifiable occasion for a strike?

A. Well, where if they were unreasonable to the
382 point in pay or some other condition where it affected our home life, or something like that, we, as American citizens, have certain rights, and if they violated any of them, why, conceivably, we would have a right to go ahead and strike.

Q. Now, let's be specific, as an illustration—

A. Well, if they would want to force us to work for a wage that we considered not within the decent standards of living for our family, then we would have to resort to the final methods of a strike, which is costly to both sides, regardless of how you look at it.

Q. And what would be such a wage?

A. Well, again, that varies according to your status in life and the number in your family and things of that sort.

Q. Well, let's take the present status.

A. Well, I say each family would vary.

Q. Well, are you thinking of individual families going on strike?

A. No, you couldn't do that. You would have to strike as a whole.

Q. Now, give me an occasion that might arise in the present circumstances that you think would justify a strike?

A. Well, offhand I just can't cite that. It would depend on the circumstances leading up to such a condition.

Q. Well, give me some circumstances that might justify it?

A. Well, I don't know just how you can cite an
383 imaginary case as such.

Q. Well, you said a minute ago you could conceive of such an occasion. Now, what I want you to do is to conceive it.

A. Well, I said I could conceive of the time, I could conceive the time might arrive when we might want to strike.

Q. All right, describe such a time.

A. Well, just offhand, it is hard to say, but I say my philosophy of labor is in general that a strike is costly, it is a poor way of getting results, but if labor has to, that is its final method.

Q. Well, I am not arguing with you about it, but I just want your present opinion, I just want to see what is in your mind.

A. Well, I can conceive of such a condition arising, but what the condition might be, there are so many variable factors enter into it that I can't conceive of it offhand.

Q. Well, go ahead and conceive it. Tell us what it would be.

A. Well, I didn't say I conceived of a certain circumstance, but I said I could conceive that the time might arise when we would want to resort to a strike, and it would be all right in that case, and it would be an extreme measure.

Q. Well, suppose that tomorrow the company announced that due to straitened financial circumstances they were going to put into effect immediately a 50 per cent cut in pay, and you went to them and pro-
384 tested, and they said, "Boys, we are sorry, that is the best we can do." Do you think that would be a justifiable condition to strike?

A. I would say they would have to show cause for the drastic reduction in pay.

Q. Suppose they tell you that is all they can afford to pay?

A. If they made that statement and I was sure they could give better pay, then I would say we would be justified if certain conditions came up—

Q. Give me some conditions about it?

A. Our Association would have to ascertain their financial status.

Q. Well, if they say that is something for the stockholders, it is not the employees' concern, and they would say, "You would have to trust us"?

A. Then you would have to go on the general assumption, I suppose, because you would know from their facilities in doing business, and the number of years they have been in it, and not being conversant with any financial reverses they might have had, you would have to resort to common sense as to whether it was a true statement.

Q. Suppose that they point out that they were
385 engaged for years in running the business, they are experts about financial matters, and that no man like a lineman or a meter man would know, and that you should rely on their judgment?

A. Well, you could know whether their revenue had fallen by the general trends in the country.

Q. Well, suppose it was tomorrow?

A. Well, I would say that would be clearly out of reason.

Q. And would you strike?

A. I wouldn't myself. It would depend on the Association or the majority in the Association.

Q. All right. Do you think that would be a proper occasion for a strike by your Association?

A. If all of the other avenues open have failed, then I would say yes.

Q. What other avenues do you have in mind?

A. Arbitration, after we have taken it to the management and they have turned it down, and there is a provision for arbitration in our agreement.

Q. All right. Suppose the company says we think it is not a matter for arbitration.

A. But it says it in our by-laws and they agree to it in the working agreement.

Q. Well, perhaps you could not agree on a third arbitrator?

A. It says so by the agreement, and they would have to live up to the agreement, they would have to
386 accept it, they accept one and we accept one, and if they don't agree to that, they have violated their agreement.

Q. But suppose the only arbitrator they will accept as a third one is one that you think will not be fair to you?

A. Then it would be, because we both must accept that.

Q. Supposing you can't, then what would you do?

A. Strike would be the only alternative left.

Q. And would you strike?

A. It would be the Association.

Q. But it would be perfectly proper?

A. Yes.

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RE-CROSS EXAMINATION

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Q. Now, with respect to your salary, is your
388 salary the same or any different today than it was before you became president of the Association, except for general increases that were accorded all employees?

A. No, the last change was when that nickel raise came through.

Q. And except for that, your salary is just the same as it was?

A. That is right.

Q. Prior to the time that you became president of this Association?

A. That is right.

389 Q. Now, with respect to grievances were you in any position prior to the time you became president where the matter of grievances would come to your attention, such as they did after you became president?

A. No.

Q. So that it might well be that there might be many

causes for grievances existing prior to the time you became president and that they were never called to your attention?

A. Well, that is possible and some might be nursing a grievance unto themselves that they had not divulged, and as soon as the facilities were provided whereby they could hear that, have that grievance heard, why, then I suppose several of them came to the surface.

Q. Do you feel that your Association has functioned as a satisfactory medium for the presentation and adjustment of those negotiations?

A. Yes, I think that it has.

Q. You feel that the work of the Association is satisfactory in that respect, do you?

A. I do.

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LESTER SHIELDS,

400 a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q. (By Mr. Reynolds): State your name and address, please.

A. Lester Shields, Bremen, Route 2.

Mr. Seebirt: What is your first name?

The Witness: Lester.

Q. (By Mr. Reynolds): Bremen, Indiana?

A. That is right.

Q. What is your occupation, Mr. Shields?

A. Lineman.

Q. For what company?

A. Indiana & Michigan.

Q. How long have you worked for the company?

A. Three years the 12th or 13th day of August I started.

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A. Yes, I asked him if I didn't go to that meet-

410 ing, if a person would be discriminated in any way.

Q. Go ahead.

411 A. He said "as long as I am around here and you do your work and cause no trouble on the job, that I will guarantee you will not be discriminated against."

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CROSS EXAMINATION

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Q. When did you become a member of the In-

428 ternational Brotherhood?

A. Better than two years ago.

Q. Two years ago. And you have been a member in good standing ever since?

A. Yes, sir.

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Q. Now, so far as you know you have never

456 been interfered with by any other persons—let me put it that way, by any other persons with reference to your solicitation of members for the International Brotherhood, have you?

A. No.

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Q. I see. And your object in asking them to

457 come to the meetings was that they might become members or affiliated with the International Brotherhood, isn't that right?

A. Well, I will kind of answer that in this way, if it suited them.

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Q. And since you have been engaged in that work you have not noticed any change in the attitude of the company and your foreman towards you, have you?

A. Not, not of my foreman.

458 Q. No reduction in pay or no harder work?

A. No.

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RE-CROSS EXAMINATION

Q. (By Mr. Seebirt): How many attended that

470 meeting on Western Avenue?

A. There were twelve.

Q. Twelve persons, twelve employees of this company?

A. That is right.

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DEWEY EDWARDS,

482 a witness called by and on behalf of the National Labor Relations Board. being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

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Q. (By Mr. Reynolds): Are you a member of the International Brotherhood of Electrical Workers?

A. I am.

Q. When did you join, approximately?

A. Well, I signed an application in April, 1937.

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Q. Did you attend any meeting of the Michiana

486 Association?

A. I attended three.

Q. When was the first meeting that you attended?

A. May 20th.

Q. What occurred when you went to the meeting that night?

A. Well, before the meeting, at noon the foreman, Claude Hildebrand, came out of the office, I believe he had a slip of paper, I am not sure, and he said there is a special meeting or a big meeting at the St. Joe school on, I believe it is on Colfax.

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CROSS EXAMINATION

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Q. Did you go to someone and ask to become a

494 member or did someone come to you and ask you to become a member?

A. Well, I expect I asked to become a member.

Q. Do you recall who it was that you asked?

A. Well, I asked John Marks for an application.

Q. How did you know that Mr. Marks had an application?

A. He should have. He is the assistant business agent of No. 9.

Q. And how long had you known that Mr. Marks was the business agent?

A. Oh, approximately four years.

Q. Had you seen Mr. Marks prior to the time you asked him for the application?

A. I had.

Q. How many times had you seen him previously?

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Now, Mr. Marks testified that he was here, he
495 was contacting people in this plant, and I was trying to get some idea, for your Honor to have some idea as to the situation existing here just immediately preceding the organization of this association.

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Q. Was there any discussion about that?

496 A. Well, nothing more than Mr. Marks and Mr. Guy told the employees that were there, that they were going to try to organize the I. & M. employees and the employees that wanted to sign applications should come up and sign.

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Q. Now, in that conference that you had with
502 Mr. Dequine, didn't Mr. Dequine tell you that he was familiar with the Wagner Act, and that under the Wagner Act solicitations for memberships in a labor organization were not to be made during working hours?

A. I believe he said something like that.

Q. Didn't he also say to you at that time that any employee of the company could affiliate with any labor organization that he might choose?

A. I believe he did.

Q. That it was not his purpose, nor the purpose of the company, to try to tell you or any other employee what labor organization to put in with?

A. Yes, that is what he told us.

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Q. Who is your foreman, Mr. Edwards?

503 A. Fred Rikert is my present foreman.

Q. Who?

A. Fred Rikert.

Q. Do you know whether he is a member of the Association or the Brotherhood?

A. I do not.

Q. Has he ever said anything to you about the

504 Association?

A. No, sir.

Q. Has he ever solicited you to become a member of the Association?

A. No, sir.

Q. Has he ever said anything to you in criticism of your membership in the Brotherhood?

A. He has not.

Q. Has he ever said or done anything that would indicate to you that he has any feeling about your affiliation with a labor organization?

A. No, sir.

Q. Do you feel that he has discriminated against you in any way because you are a member of the Brotherhood?

A. He has not.

Q. Have you solicited the employees to become members of the Brotherhood?

A. I have since October; October, '37.

Q. That solicitation was during working hours or after working hours?

A. It was after working hours.

Q. That would be principally in the evening?

A. Evenings, Saturdays, Sundays.

Q. And you made no secret about it, did you?

A. I did not.

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Q. What Mr. Carlton said to you—did he say

511 anything to you or did he indicate to you that you

would be discriminated against if you did not become a member of the Association?

A. He did not.

Q. You felt that you could act freely in the matter, did you not?

A. Well, there was some doubt in my mind about that.

Q. Well, what would create the doubt in your mind?

A. Well, more the fact that the foreman that I was working under came up and said we were all expected to be at the meeting and we had better come.

Q. Was that the only thing that ever occurred
512 which caused you to feel that you could not act freely in the matter?

A. I didn't know of anything to stop me from acting freely.

Q. You felt that there was no reason to believe you would be discriminated against if you did not join the union?

A. I had no reason to think that, no.

Q. And at the same time you retained your membership in the Brotherhood?

A. I was not a member of the Brotherhood yet. I merely signed an application.

Q. Well, your application, you did not withdraw the application?

A. I did not.

Q. You apparently did not feel it was necessary to withdraw your application, is that it?

A. I did not feel it was necessary to withdraw, no, sir.

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NELSON D. LAMBERT,

551 a witness called by and on behalf of the National Labor Relations Board, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

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Q. Prior to May 20th, what was your first con-
555 tact with the Association?

A. My first contact or the first knowledge that I had of it was the evening that Mr. Henderson asked me if I would come out to his house, he said there were some other men were coming out and wanted to talk about starting an Association.

Q. Was that all he told you before you actually went to the meeting?

A. That is all.

Q. That is the first knowledge you had?

A. That is right.

Q. That was how long before the meeting of May 20th?

A. I imagine about four or five days.

Q. Did you go to that meeting.

A. Yes, I did.

Q. Who do you remember was in attendance?

A. Well, there was Mr. Edgell, Mr. Marsh, and Mr. Carlton, Mrs. Campbell, Mr. Henderson and myself.

Q. Who is Mrs. Campbell?

A. The stenographer.

Q. That is all you remember that was there?

A. That is all.

Q. Who took the lead in broaching the proposition?

556

A. I don't know that anyone did. It was just a general discussion.

Q. What do you recall about the discussion at this time?

A. Well, it was suggested that in order to get some expression from the different employees of the company it would be wise to call a general meeting.

Q. Who made that suggestion, do you recall?

A. I don't recall.

Q. Are you familiar with Mr. Henderson's duties?

A. Yes.

Q. What are they in general?

A. Why, he does some engineering work and he coordinates the right of way work.

Q. What do you mean by he coordinates the right of way work?

A. Well, he does just that. He gives the information

on the new lines that are to be built to the various right of way men and keeps the records in that office.

Q. You mean he lays out the work for the right of way men?

A. That is right.

Q. That is men like yourself?

A. That is right.

Q. These three other right of way agents and you get your instructions as to what to do next from Mr. Henderson?

A. That is right.

557 Q. Is that right?

A. Yes.

Q. What other duties does he have?

A. I don't know.

Q. Well, what else took place at this meeting at Mr. Henderson's house? Were there any specific plans laid?

A. No, none other than the decision that a meeting would be held, a general meeting.

Q. Now, was there any other meeting between that time and the time there was a general meeting?

A. Not to my knowledge.

Q. Well, were you present at the general meeting?

A. I was.

Q. And that was on May 20th?

A. That is right.

Q. Now, you have said that you presided at that meeting. How did that come about, that you were the presiding officer?

A. When I came to the meeting I saw Mr. Collins and Mr. Henderson, who were coming from the other direction to the school house, and they told me that they had tried to find Mr. Holmes to get Mr. Holmes to conduct that meeting and it was impossible because he had been called out of town, and they asked me if I would be willing to conduct the meeting and I said that I would.

Q. What did you do then?

A. Well, very hurriedly Mr. Carlson and Mr.

558 Henderson—

Q. Mr. Carlson?

A. Mr. Carlton.

Q. Mr. Carlton.

A. And Mr. Jernegan, who was an attorney, went over the suggestions that they had for this meeting.

Q. What do you mean they went over the suggestions?

A. We went over the plans of procedure that we would follow in conducting this meeting.

Q. How did Mr. Jernegan get into the situation?

A. We had talked at Mr. Henderson's home about the advisability of having an attorney to consult with before starting any or having any meeting.

Q. Well, who if anyone was delegated to talk with Mr. Jernegan?

A. Mr. Collins, I believe, and Mr. Marah.

Q. You were not along?

A. I was not.

Q. Now, what procedure did you discuss about the meeting on that day?

A. Well, in order to get the matter before the assembled company we wanted to read a part of the new Wagner Labor Act, which I did. I then asked them or asked the company, rather the meeting, if they would be in favor of starting a company union.

Q. And what further was said?

559 A. Well, that was put to a vote.

Q. Did someone make a motion to that effect?

A. That is correct.

Q. And what was the result?

A. Well, I can't remember the exact result. I know that it was a great number of the majority in favor of starting a company union.

Q. Now, were there nominations made for officers?

A. We asked for officers for a permanent chairman.

Q. And were nominations made?

A. There were.

Q. Do you recall who were nominated?

A. Mr. Holmes was nominated, I believe somebody nominated me and one or two others I don't remember.

Q. Now, there were votes taken were there not, on one or two of those names?

A. There was a standing vote taken. I asked that my name be withdrawn.

Q. Now, you say that there was a standing vote taken, on whom?

A. On Mr. Holmes and on the other delegates or nominees.

. . . . . .

A. After the election of a permanent chairman,
562 it is my recollection that we asked, that I asked for a representative from the various departments of the company to come forward.

Q. And did that take place?

A. That did.

Q. Did representatives come forward?

A. They did.

Q. Did you name the representatives that were to come forward?

A. I did not.

Q. Well, did the men just spontaneously come forth?

A. No, I asked that each group send someone forward to represent them.

Q. Well, was there any conference among the different groups present about who they should send up in front?

A. Yes, I believe there was.

. . . . . .

A. After the representatives came forward it
563 is my recollection that we called a recess in order that these representatives might sign a petition which we planned to present to the company.

. . . . . .

Q. How many people were present at this meet-
564 ing?

A. Several hundred. I can't say as to the number.

. . . . . .

Q. Is that the only meeting that you ever presided at?

A. No, I presided at one other meeting at Twin Branch,

and helped them organize their section out there.

Q. How much later?

A. That was some weeks later. I can't tell you when it was.

Q. Who asked you to go to Twin Branch?

A. I don't even remember that. It probably was Mr. Collins, but I am not sure.

Q. Mr. Carlton?

A. Mr. Collins.

Q. Mr. Collins. Well, what did you do at Twin Branch?

A. Simply conducted that meeting until they could elect their officers.

. . . . . .

CROSS EXAMINATION

566 Q. (By Mr. Seebirt): Mr. Lambert, during the last year the company has been quite active in ex-
567 tending into the country what we call rural lines, hasn't it?

A. Yes, sir.

Q. And in the last two or three years it has done perhaps more on that subject than it has done any time in the history of the company?

A. Yes, sir.

Q. And you take some contracts in your pocket and you go out to get the right from the farmers to put the rural lines across the farms, is that right?

A. Yes, sir.

Q. And usually when you approach a farmer to get his consent and get him to sign one of these contracts, he himself ordinarily is one of the beneficiaries of putting the line out there?

A. Yes, sir.

Q. In other words, he is going to get service?

A. Yes, sir.

Q. And most frequently, therefore, they sign these agreements without any consideration or any bargaining at all, isn't that true?

A. Yes, in most cases.

Q. Yes. Sometimes you strike somebody that has to have pay for the privilege, is that right?

A. Yes. Sometimes we strike somebody that has an objection to having the line put on the property.

568 Q. Yes, sir, if they don't object that way, they want pay for the right?

A. Yes.

Q. Now, do you have anybody working under you in your particular work?

A. No, sir.

Q. And I take it, your occasion for talking to school boards is when one of these rural lines has to be put over a school lot or school field, that requires you to approach the school authorities, is that it?

A. That is right.

Q. Yes. You don't, as counsel would seem to imply, go and negotiate for franchises from cities or towns, or anything of that sort?

A. No, sir.

* * * * * * * * * *

574 Q. Was there anybody present who said that the management, Mr. English or Mr. Calvert, or somebody else, would prefer that a union take the form of an independent organization?

A. I never heard that statement made.

* * * * * * * * * *

575 Q. Yes. And then did you start in with the explaining of the purposes of the meeting or with the election of officers?

A. No.

Q. What was the first thing you did?

A. I started in with the explanation of the purposes of the meeting.

576 Q. Was Mr. Jernegan present at that meeting?

A. He was.

Q. Tell the Board what it was you said as to the purpose of the meeting.

A. Well, I explained that we wanted to get the question before the meeting as to whether or not they would

like to form an association, and I tried to read them their rights under the Wagner Act.

Q. Did you have a copy of the Wagner Act?

A. Yes, I did.

Q. And did you read parts of it to them?

A. I did.

* * * * * * * * * *

576 A. Well, I tried to point out to the meeting that we had certain rights under the Wagner Act.

Q. Yes.

577 A. We were entitled to form an association or a union, if we saw fit to do so.

Q. That is, that under the Act you had a right to form an independent association or union?

A. That is right.

Q. And that is what you told them?

A. That is right.

Q. Did you tell them also about whether they had a right to join the C. I. O. or the American Federation of Labor, if they wanted to?

A. I believe I did. I brought that point out too.

Q. That they had an absolute right to do any of those things?

A. That is right.

Q. Was there any discussion by any other person other than yourself upon the subject, before we get to the nomination of officers?

A. Yes, there was. I asked for a general discussion at that time.

Q. And who participated in the general discussion?

A. There were several who stood up.

* * * * * * * * * *

Q. Yes. Now, in all that discussion there, you
578 may state to the Board whether or not there was anything said about the management wanting you to form such an independent association?

A. That question wasn't brought up.

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Q. (By Trial Examiner Dudley): I would like
581 to ask you a little further on what Mr. Seebirt

asked you about concerning your own duties. First, may I ask, who is your superior?

A. Mr. Dequine.

Q. Do you work directly under him?

A. Well, I work, I would say, under Mr. Henderson.

Q. And is he under Mr. Dequine?

A. Yes.

Q. Does Mr. Dequine ever give you orders as to where you are to go or what you are to say?

A. Once in a while, yes.

Q. Does Mr. Henderson usually give them to you?

A. Usually.

Q. Does Mr. Henderson indicate for you on maps or otherwise the territories that you are to cover?

A. Yes.

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Q. Supposing the land owner wishes to make
588 changes in this right-of-way you want him to sign, do you allow him to make changes?

A. What do you mean by making changes?

Q. Well, suppose he crossed out something, that he doesn't want this easement to last more than twenty years perhaps?

A. Well, I would be willing to submit it to the company and see if they are willing to agree to it before we make any agreement.

Q. Would you pass on any desired changes such as that?

A. No.

Q. None of them?

A. No.

Q. Not even a very slight change?

A. No.

Q. To whom do you go when you want to consult someone?

A. Usually talk to Mr. Henderson about it, and talk to Mr. Dequine if he feels it is necessary.

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GERALDINE CARLSON,

597 a witness called by and on behalf of the National Labor Relations Board, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

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Q. Well, what was your next connection or ac-
600 tivity in the Michiana Association?

A. Well, I think the evening of May 20th, I think us girls had known it, mentioned something that we heard there was a meeting, but we didn't think that we would go, we thought we would wait and see what took place and if it looked like something we would be interested in we would go later, and as I was going out at five o'clock, I can't remember who it was asked me if I would come to that meeting and bring a notebook and pencil to take some notes.

Q. You don't remember who that was?

A. I can't remember who that was. I think it was Mr. Henderson, but I am not positive of it.

Q. Had you had any prior conversation with Mr. Henderson about the meeting?

A. No. They stopped me at five o'clock, because I had a ride waiting for me at five o'clock, and I expected to go home. I didn't expect to go and take any notes.

Q. Had you been to an earlier meeting prior to May 20th?

A. No.

Q. Did you go that meeting?

A. Yes.

• • • • • • • • • • • •

Q. I refer you to the copy of the minutes of
602 May 20th and ask you if your recollection is refreshed from that as to who was nominated for the office of secretary and how the vote was taken?

A. Well, Miss Genevieve Hickey and myself were nominated and then a standing vote was taken, and it doesn't give the number here, but there weren't so many for Miss Hickey, because I think quite a few of the

people knew that she could not take dictation, but whoever it was nominated her didn't know that.

. . . . . .

Q. And were those minutes prepared on your
604 typewriter?

A. Yes, that is—I guess they call this Hectograph, Hectograph or Ditto, what do you call that.

Q. Well, do you have a Hectograph?

A. Yes, I have a gelatine roll at home, I had it out to the lake where I stayed in the summer and I ran those off by hand, running them over that with a rolling pin.

Q. And that is the way you have always prepared your minutes since that time?

A. No, those—you see, that is sort of unsatisfactory, the gelatine outfit was very old, so we decided to use mimeograph and have them run off by the Office Supply and Equipment Company.

Q. And they have been done that way since?

A. Yes.

Q. How much time do you spend, Miss Carlson, in the work of writing up the minutes?

A. Well, for a long meeting like those first ones when I got home from the meeting, if it was work that they would like to have out for the next day, I went right home and typed them while the notes were fresh, and sometimes it would take me oh, maybe an hour and a half or two hours, and if they were not in a hurry for it, I would wait until the next evening or maybe the next one or something like that and it would take me
605 two or three or four hours work.

. . . . . .

CROSS EXAMINATION

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Q. Do you do any work for the Association as
610 Stenographer for the Association during working hours?

A. No, I do it all at home.

. . . . . .

Q. Do you know how many of those cards there
615 were?

A. I think they were counted. It might tell in here.

Q. It says 670.

A. I put that figure down there.

Q. Who brought those cards in, Miss Carlson?

A. Well, they were collected around the audience that evening, and I think there was somebody collecting them at the door, some handed them in as they came in the door.

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EARL FREEMAN,

621 a witness called by and on behalf of the National Labor Relations Board, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

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Q. Now, at a later time you joined the Inter-
625 national Brotherhood of Electrical Workers, is that right?

A. Yes.

Q. And can you place that more definitely in time?

A. Well, I would say that it was right around possibly the last of August or the first of September.

Q Of what year?

A. Last year.

626 Q. 1937?

* * * * * * * * * *

630 Q. You know Mr. George Holmes, don't you?

A. Yes.

631 Q. And you know that he is an employee who is generally about one hundred per cent respected by the employees in the company, don't you?

A. Yes, sir.

Q. It is a fact everybody working for the company respects him, isn't that right?

A. As far as I know, they do.

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655 **R. L. HOBLITZEL,**

a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q. (By Mr. Reynolds): State your name and address, please.

A. R. L. Hoblitzel, 128 Rhode.

Q. (By Trial Examiner Dudley): R. L.?

A. R. L.

Q. (By Mr. Reynolds): Speak up, Mr. Hoblitzel, so everyone can hear you.

What is your occupation?

A. I am a crew foreman.

Q. You work for the I. & M. Company?

A. I do.

Q. How long have you worked for the company?

A. Approximately 15 years.

Q. Did you at any time become a member of the International Brotherhood of Electrical Workers?

A. I did, in 1929.

* * * * * * * * * * *

660 Q. Now, did you rejoin the International Brotherhood of Electrical Workers?

A. I am not a paid-up member in good standing.

Q. Did you sign an application?

A. I signed an application.

Mr. Seebirt: What was his previous answer?

(Answer referred to read.)

Q. (By Mr. Reynolds): You did sign an application?

A. I did.

Q. And have you attended the meetings?

A. I have attended two meetings.

Q. When were those two meetings?

A. The first meeting was sometime in the middle of April, 1937. Then a meeting just a few weeks ago, possibly a month.

Q. Now, at the meeting in April of 1937, will you describe what took place at that meeting?

A. As I approached the hall, I saw Mr. Carlton
661 across the street, and I went over and spoke to him, and asked him to come up, and he told me he was waiting for another party, so I went up.

Several of the boys up there told me they had seen Mr. Livelsberger downstairs, so I went down, I wanted to talk to him, and I looked for him and couldn't find him. I again went over and talked to Mr. Carlton, and while I was there Mr. Livelsberger drove by.

I called to him and he stopped, or rather, he went on and parked his car and come on back to Mr. Carlton's car, and we talked generalities, and while we were there—

Q. What were you talking about?

A. Oh, just this and that, nothing in particular.

Q. All right. What happened after that?

A. And while we were in the car Mr. Guy came over and inquired for Mr. Carlton and cordially invited him to come up to the meeting and find out firsthand what they had to offer. He said he didn't have to attend the meeting to get the information firsthand, he would get it in the morning.

Q. Now, were you at any time ever solicited for membership in the Michiana Electrical Utility Workers Association?

A. I was.

Q. By whom?

A. By Mr. Carlton. He called at my house possibly between four-fifteen and four-thirty, I would say. I couldn't give you the date. And he told me that there would
662 be no question about the company recognizing the union, that it was the older fellows, wanted me to take cards and solicit the men that worked with me, and I refused.

Afterwards I talked to Mr. Livelsberger. He was a friend of mine for years, and he refused to advise me one way or the other, so I told him—

Q. Now, on what day was your talk with Mr. Livelsberger?

A. I wouldn't know.

Q. Well, did you receive something through the mails that same day?

A. Not through the mails. I told Mr. Livelsberger that I wouldn't join this Association only through him; if he wanted me to join it, to get me a card and I would sign it. That evening there was a card for me in the mail basket. That is not in the mail.

Q. In the mail basket of the company?

A. Yes.

Q. Where is the mail basket of the company?

A. In a sort of a lobby.

Q. A lobby of what?

A. At the plant, an aisle to the office. I signed the card and returned it, and I believe I returned it to Mr. Knepp, at least, I paid my dues in Mr. Knepp's office.

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RAY M. COLLINS,

731 a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q. (By Mr. Reynolds): Will you state your name and address, please?

A. Ray M. Collins, 401 Park Avenue, Mishawaka, Indiana.

Q. What is your occupation, Mr. Collins?

A. I am a condensor operator of the Twin Branch plant for the Indiana & Michigan Electric Company.

Trial Examiner Dudley: I didn't hear that.

The Witness: Condensor operator.

Q. (By Mr. Reynolds): How long have you worked for the company?

A. A little over nine years.

Q. Are you a member of the Michiana Electrical Utility Workers Association?

A. I am.

Q. Are you an officer of that organization?

A. I am.

Q. What is your office?

A. I am a representative from the Twin Branch Division of the general council.

Q. Any other office?

732 A. I am the treasurer of the general council.

Q. How long have you been the treasurer of the general council?

A. Since the general council's organization.

Q. (By Trial Examiner Dudley): Since when?

A. The general council's organization.

Q. I don't know what you mean.

A. Well, the general council wasn't organized until after the representatives were elected from the various divisions. The general council consists of the elected officers, elected by the representatives from the various divisions to the general council.

Q. I see. Can you tell us about when this was?

A. I imagine it was in July of 1937. I wouldn't say exactly the day. I think the records would show though.

Q. (By Mr. Reynolds): What was the first knowledge you had that there was an association to be organized?

A. The first knowledge I had that there was—that this Association was to be organized was on the night of, I believe it was the 18th or 19th of May, I wouldn't say which, I was asked to attend a meeting at South Bend.

Q. Who asked you to attend the meeting?

A. I don't remember whether I was called on the telephone. I believe I was.

Q. By whom?

733 A. I think Jack Hanley.

Q. Now, who is Jack Hanley?

A. Jack Hanley is the watchman out at Twin Branch.

Q. Is that all he is, a watchman?

A. Well, he is—I don't know what his official title is.

Q. Well, he has other duties besides watching the property, doesn't he?

A. Yes, he is custodian of the property, I will say that. Maybe that is his official title.

Q. You mean, he is the watchman and the janitor combined?

A. He is the custodian of the property. I don't know if he does any janitor work or not.

Q. Well, is there any janitor work down there?

A. Yes.

Q. How many janitors do you have?

A. I don't know.

Q. Well, as custodian of the property, what does Mr. Hanley have to do?

A. See that the property, I presume, is kept in general good condition. I don't know what all he does.

Q. Does he have employees that take their orders from him?

A. He probably does.

Q. Well, do you know whether he does or not?

A. I don't work in his department, I don't know.

Q. You have never been there and observed him
734 at work?

A. He sits in the office at the main entrance once in a while when I come in. I come in at three different times in a day.

Q. Does he have police duties?

A. I don't know. I don't know his official duties.

Q. Do you know whether there are other watchmen besides Mr. Hanley there?

A. There are watchmen at both gates at all times.

Q. And do you know whether he has supervision over those watchmen?

A. I presume that he does.

Q. What did Mr. Hanley tell you?

A. He asked me if I would go over on 21st Street and attend a meeting that night.

Q. Well, did he explain what kind of a meeting it was?

A. No, he didn't.

Q. Well, where was this meeting?

A. I think at Mr. Henderson's home.

Q. That is the only notice you had of the meeting?

A. Of that meeting, yes.

Q. What happened when you got to the meeting? Who did you find there?

A. Well, I didn't find anybody except one man that I knew.

Q. Who was the one man that you knew?

A. James Marsh.

Q. Is he the only one there that you knew?

735 A. He was.

Q. There were others there?

A. Yes, sir.

Q. Are you now able to say who some of the others were?

A. Yes, sir.

Q. From having later become acquainted with them?

A. Yes, sir.

Q. Who were some of the others?

A. Mr. Lambert was there?

Q. Mr. Nelson Lambert?

A. Mr. Nelson Lambert, Mr. Taylor Edgell, Mr. Carlson, I believe, and outside of those names—

Q. You mean Mr. Carlton?

A. Mr. Carlton,—is that his proper name?

Q. And were there others there?

A. Yes, there was seven or eight there.

Q. Mr. Henderson, of course, was there?

A. Yes, he was there; so was his wife.

Q. Now, tell the Examiner what you recall about what happened at that meeting. What was discussed?

A. Well, there was a copy of the Wagner Relations Act there, and it was read and discussed and—

Q. Who had the copy of the Wagner Act, do you know?

A I don't know, no, sir.

Q. Well, in what way was it discussed?

736 A. To the extent that it was brought out in the discussion that it was the right, under the Wagner Labor Law, for employees of any association or any company to form their own association for sole bargaining rights of wages and hours and working conditions.

Q. Well, was there any discussion there about the need for an organization?

A. There was.

Q. Who spoke about that and what was said?

A. Well, I probably spoke some about it. I said that at the Twin Branch powerhouse that there were quite a few members of the C. I. O. at that time, and they were more or less active in distributing literature and visiting the boys, and I thought that if it was necessary, which it seemed as though it was going to be, to have an organization, that it was our right and our privilege to form our own organization; that I didn't think that any outside organization in the C. I. O., the Ballbearing Rubber Workers local, the Studebaker local or the Bendix local knew anything about our particular business, and I didn't see why they should be allowed to bargain for us, and if it was necessary to bargain that we should form our own association and do our own bargaining.

. . . . . .

738 A. I had, and I told at the meeting that night, that, in view of the activities, that I had contacted Mr. Duding, the general manager of the Indiana Bell Telephone Company at Mishawaka, and inquired of him if it wasn't a fact that the Indiana Bell employees had an association of their own. He told me that they did. I asked him if he could give me any information on the setup, and he said in his official capacity, he wasn't a member, and he had no right to talk about the Indiana Bell Association, he didn't know.

I then asked him if he could recommend or tell me of any attorney that I could go to and talk to about the situation, and he recommended Mr. Ralph Jernegan. I went to Mr. Jernegan's office, and told him that some of the employees at Twin Branch were getting more or less worried about the situation, and I took it on myself to

739 find out if, under the law, if we couldn't organize an independent organization.

And he said, "It is possible under the law, if it is strictly an employees association and not dictated over by the management."

I said, "Well, it is to be, if it goes through, it will be an association of Twin Branch employees."

I didn't know at that time just what the ultimate aim would be or if it would even come to a head, but if it did, that I would contact him further on the matter. He said he would be willing to go along. I asked him if he knew anything about the Indiana Bell Association, and he said he did not, but he would try to ascertain some information if it come to the place where we wanted to retain him as our attorney, he would look into the Indiana Bell Association and give us some facts as to their operation and setup. That was probably, I believe, the week before I attended this meeting in Mr. Henderson's house.

Then in the meeting at Mr. Henderson's house, when the question of legal advice was brought up, there was some discussion. I informed these men that I had contacted Mr. Jernegan and that he had told me that he would be willing to act as a legal adviser to this association, and I also told the men, I believe, that in my conference with Mr. Jernegan that it was to concern the Twin Branch employees only, because at that time I knew of no activities in the other departments of the
740 company.

So after some discussion, they asked me if I could call Mr. Jernegan, and I did call Mr. Jernegan and told him we were having a meeting, and asked him if we could talk to him yet that evening. And he said he would probably be up for an hour, if we didn't wait any longer than that.

So at the end of the meeting, after the temporary name had been decided on and the wording of the petition that we wanted to present to the general meeting which was to be called, I took a transcript of that—of those statements and went to Mr. Jernegan's home.

Mr. James Marsh took me in his car, and we went in to Mr. Jernegan's house. I introduced Mr. Marsh to him and told him that we had some things we wanted to talk over with him, and he asked me then a second time, in front of Mr. Marsh, he said, "I want to know now if this is an organization of company employees only, that is, of your own free will and there is no domination, be-

cause if there is, I don't care to have anything to do with it."

And I told him, and I believe Mr. Marsh did, that so far as we knew that there was no domination from anyone.

We asked him to write up, I believe, the petition that was presented to the employees the night after for their ratification, and we also asked him to attend that meeting which was held in St. Joseph Hall.

741 That is all that was done, to my knowledge, that night.

* * * * * * * * * * *

Q. Did you after that first meeting wait upon

742 the management with any committee?

A. Not for, I would say, two or three months. I don't remember when the first meeting with the management that I attended was. I think the records will show.

Q. In the meantime, did you have anything more to do with the organization of the Association?

A. I was selected by the employees at Twin Branch to represent that department, one of the men to represent that department on the by-laws committee.

Q. At that time were the employees at Twin Branch signed up in the Association?

A. I wouldn't know.

Q. Well, how were you selected?

A. I presume from washroom talk.

Q. There was no formal meeting of any kind?

A. To my knowledge, no. I might explain to the Examiner that my duties require me to work three

743 shifts. One week I work days, one week I work four to midnight, and one week twelve to eight, and I am not always on the property. I don't know what goes on when I am not there.

* * * * * * * * * * *

Q. (By Mr. Reynolds): At the present time, Mr.

747 Collins, how many members of the Association are in good standing?

* * * * * * * * * * *

A. According to my records 625 members in
754 good standing.

Q. At the present time?

A. That is the last report I have, that is of November 1st.

* * * * * * * * * *

Q. (By Mr. Reynolds): Do you have a figure
755 which would indicate the total receipts received by the Association down to the present time?

A. Yes, sir, practically.

Q. What is that figure?

* * * * * * * * * *

The Witness: $1,575.35.

756 Q. (By Mr. Reynolds): Now, do your records also show the source of that money?

A. Yes.

* * * * * * * * * *

Q. (By Trial Examiner Dudley): Now, can you
758 give us the highest number of your membership?

A. I believe the affidavit said 790 and some. I wouldn't know exactly, as I say, I didn't make the affidavit.

Q. (By Mr. Reynolds): From those 790 members it can be assumed as a fact that at least $1.00 was collected from each one of those, is that right?

A. That is correct.

* * * * * * * * * *

Q. Now, apart from initiation fees, what other
759 types of income has the Association had during its existence?

A. Dues.

Q. And that is the only other source?

A. To my knowledge, it is.

* * * * * * * * * *

CROSS EXAMINATION

Q. (By Mr. Seebirt): How many condensor
771 operators are there at Twin Branch?

A. There are four regular.

Q. Four. And are you a foreman of the group of four?
A. No, sir.
Q. Who is the foreman?
A. The watch engineer on each particular shift would be the foreman of his condensor operator.
Q. So there is nobody under you?
A. No.

• • • • • • • • • •

Q. In that meeting you suggested the employ-
773 ment of Mr. Jernegan, I believe?
A. I did.

• • • • • • • • • •

Q. And when you attended that meeting, did
774 you have in mind wholly the matter of organizing the employees at Twin Branch?
A. Yes, when I went to that meeting, I didn't know who would be there.
Q. That was the matter that was in your mind —
A. Absolutely.
Q. —of interest to you?
A. Yes, sir.
Q. Well, you told them about the fact that you had already visited Mr. Jernegan, or rather, that you had found out about Mr. Jernegan, did you?
A. Yes.
Q. And that you had heard of Mr. Jernegan through Mr. Duding?
A. Yes.
Q. Mr. Duding is the general manager of the Mishawaka branch of the Indiana Bell Telephone Company?
A. Yes, sir.

• • • • • • • • • •

Q. And at Mr. Duding's suggestion you did
775 visit Mr. Jernegan?
A. I did.
Q. Did anybody go with you in the first instance?
A. No, sir.
Q. And you had a conference with him alone?
A. Yes, sir.
776 Q. Now, you have told us that Mr. Jernegan

said to you that he didn't want to have anything to do with the formation of this association if the company was dominating its organization or directing its organization, is that right?

A. He did.

Q. Yes. And what did you answer as to that?

A. I told him that it was an independent organization, would be, of the Twin Branch employees.

Q. And did you develop the thought any further?

A. No, sir.

Q. Did you deny that the company had suggested the matter to you?

A. I said there was nobody interested but myself at that time.

Q. Yes. And thereupon did Mr. Jernegan tell you that he would undertake the employment if your group should see fit to employ him?

A. He did.

* * * * * * * * *

777 Q. Now, at the Henderson home, you may tell the Examiner what the fact is as to whether or not the form of the organization took a broader scope or a lesser scope, if you please, than the mere organization of the employees of the Twin Branch plant?

A. When I got to Mr. Henderson's home there was men there from all the other departments that I didn't know at all.

Q. Yes.

A. And I was informed at that meeting that they were going to try to make it a general association.

Q. Did you agree with that or did you object to it?

A. I agreed with it.

778 Q. Now, I think that you said that at the Henderson meeting there was some paper of some kind prepared, written out, is that true?

A. Yes, there was a formal statement, I will say an informal statement as to what we expected to present to the gathering as a whole on the following night. That was to be an open meeting for all Indiana and Michigan employees.

Q. Well, it was not the statement then that you intended to have adopted and presented to the management?

A. No.

Q. No. It was a statement of the purposes of the meeting?

A. Yes.

Q. Do you have a copy of that statement?

A. I think it is in the record.

Q. You may look at the record, Board's Exhibit No. 5, and see whether there is a copy of that statement in that Exhibit. I don't know that that is it. You may look through it and see.

A. I believe this is either a copy of it or the original of the statement that Mr. Jernegan wrote for us.

Q. Yes. Let's mark this page A of Exhibit No. 5. This paper marked page A of Exhibit No. 5, is that a copy of the paper you have spoken of?

A. I believe it is.

Q. Well now, I am uncertain about it, whether or not this paper was prepared at the Henderson meeting or whether it was a paper that was prepared by

779 Mr. Jernegan.

Trial Examiner Dudley: Off the record.

(Discussion off the record.)

Mr. Seebirt: Will you read that question now, please?

(Question read.)

The Witness: The original of this statement at the top here was prepared by Mr. Jernegan.

Q. (By Mr. Seebirt): Yes.

A. These names on here were signed at this open meeting, but those names were not on the petition, that is were not put on there at Mr. Jernegan's house, but this here I think is the statement that he prepared for us to read in the open meeting.

Q. You said in Mr. Jernegan's house. You mean in Mr. Henderson's house?

A. Well, what we prepared at Mr. Henderson's house was simply an idea as to what Mr. Jernegan was to include in his formal statement.

Q. I see. There was a paper then drawn by those who

were attending the meeting at the Henderson home, and that was then brought to Mr. Jernegan, was it?

A. Yes, to put into the proper form.

Q. So this is rather a composite of the Henderson meetings' wording and Mr. Jernegan's?

A. Yes.

780 Q. And as we have the Exhibit here it is the final work produced in the office of Mr. Jernegan?

A. Yes, except the names on there.

Q. Now, I notice that it says, "You are hereby—" it is addressed to Mr. Thomas F. English and says, "You are hereby notified that a majority of the employees of the Indiana & Michigan Electric Company have organized a union."

Well now, at that time, they had not organized a union, had they?

A. No.

Q. And you didn't know at that time, did you?

A. No.

Q. Wait a minute. You didn't know at that time, that there would be a majority that had acted, did you?

A. No.

Q. Why did you have such a statement as that drawn?

A. We expected to present it to the employees for their ratification.

Q. Yes. Did you expect that there would be a majority at the meeting that night of May 20th, that would ratify it?

A. We didn't know.

Q. Well, you must have expected it, didn't you?

A. Well, we expected it would be ratified, but we didn't know. There was no reason why we should know. It was an open meeting for all I. & M. employees.

781 Q. Yes. You say that you expected that it would be ratified and I am now asking you about your expectation, as to whether or not there would be a majority of the employees present to ratify it?

A. Yes, we thought there would be.

Q. As a matter of fact, work had been done on this for some days before this, hadn't it?

A. Yes.

Q. When you and Mr. Marsh went to see Mr. Jernegan, did he make some promise as to finding out something about the organization of the Indiana Bell Telephone employees?

* * * * * * * * * *

Q. Through him or otherwise did you ever get any information as to their set-up, by-laws or anything of that sort?

A. I think there was a copy of the Indiana Bell Telephone's by-laws at one of our earliest meetings.

Q. There was?

A. I believe Mr. Jernegan furnished it.

782 Q. And now I am going to the meeting on May 20th, that was the large meeting. Can you tell the Examiner how many folks attended that meeting?

A. Well, I don't know the capacity of the hall. I was in the far corner in the front seat, and I know that when I stood up to look around the hall looked like it was full to me. I would judge there were five or six hundred.

Q. Now, you were quite active in that meeting?

A. I was.

Q. You may tell the Examiner whether it was necessary for an employee who wanted to attend the meeting as a condition precedent to his right to attend to sign a membership card before he could do so?

A. No.

Q. In other words, any employee was welcome?

A. It was an open meeting for I. & M. employees.

Q. Now, there have been some men testify here about a number of foremen that were gathered around the door of the meeting place. Do you recall that there were some there?

A. There were some men, I don't know as of my own true knowledge if they were foremen, but they were representatives from the various departments of the various sub-stations in order to identify I. & M. employees.

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Q. Now, you have testified that you met with
783 the management about two months after—was it

after the organization of the Association on May the 20th, or was it two months after your being made a member of the general council?

A. Well, the first meeting I had with the management was as a representative of the general council executive committee.

Q. Yes.

A. That would have to be around, well, in July, probably, because the organization was not permanently set up until that time.

Q. Mr. Collins, how many meetings do you suppose that you as a member of the executive committee had with the management, since the formation of this Association?

A. Well, I think that I have attended six, and there is one that I did not attend.

Q. Yes.

A. I wouldn't say that that is the exact number.

Q. What were the matters that you took up with the management?

A. The recognition of this Association as the sole bargaining agent for the company employees.

Q. Did that particular question take some time of your committee and the management?

A. That was the first question that we pre-
784 sented to the management, was their acceptance of—

Q. Well, did they immediately recognize your Association as the sole bargaining agent of the employees?

A. No.

Q. How long was that negotiation going on before acceptance was had?

A. Well, I wouldn't say the exact length of time, but they required of us, if we wanted to be the sole bargaining agent, to produce under the Wagner Law a sworn affidavit that we had 50 per cent or more of the eligible employees of the company, I mean eligible for membership in this Association, as paid up members in our Association.

Q. When you say "they" who was it that said that

you must present something showing us that you had 51 per cent?

A. Mr. Calvert and Mr. English.

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785 Q. In this meeting of May 20th, can you tell the Examiner about the steps of the meeting as they took place, chronologically, if you can.

Trial Examiner Dudley: Read that question back to me, please.

786 The Witness: As I recall, Mr. Lambert, who had in the meeting previous been selected by the representatives from the various—I will say the men at Mr. Henderson's, house that night, I believe had decided that Mr. Lambert was to take charge of the meeting, and after he went to the stage—I may be mistaken—he called the meeting to order and stated the objective, the reason for the calling of the meeting, and read excerpts from the Wagner Labor law and asked if we wanted to form an independent Association or a union, and I believe that a motion was made from the floor that the employees of the Indiana & Michigan Electric Company form such an Association.

Q. (By Mr. Seebirt): Now, on that motion was there any discussion?

A. I don't think so.

Q. You don't think so. Then was it put to a vote?

A. It was put to a vote, yes. After the motion was seconded it was put to a vote.

Q. Were there any negative votes?

A. I don't believe there were.

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788 Q. Now, after that what took place in that meeting?

A. I think that after that the next order of business was that they read to the assembly the proposed petition to the management as prepared by Mr. Jernegan.

Q. And that is the paper which we have referred to here as Page A, of Board's Exhibit No. 5?

A. That is.

Q. And that was read to the meeting, was it?

A. It was.

Q. And was it objected to or agreed to that that should be executed and presented to the management?

A. It was agreed to.

Q. It was agreed that it should be presented, and was there the formation of any committees at that meeting for the purpose of preparing by-laws or doing anything else?

A. Yes, there was the election of a permanent chairman.

Q. And who was nominated for permanent—

Just a moment please. Was that permanent chairman or was it a chairman to operate until the organization could be effected?

A. I wouldn't say it was a permanent chairman or temporary chairman. It might have been temporary chairman, too.

Q. Just a chairman. And were there nominations called for?

A. There were.

Q. And who were nominated?

789 A. Well, George Holmes, myself and one other man. I don't recall the name. I think the record will show.

Q. Was Mr. Henderson nominated?

A. Mr. Henderson?

Q. Henderson.

A. I don't recall. I have not read the record and I don't recall who the other nominee was.

Q. You got some votes, didn't you?

A. I think the record will show, 92, I believe.

Q. Yes. I am going to ask whose votes you got, if you know?

A. I think the majority of the employees of the Twin Branch Power House that were there.

Q. You think that they supported you?

A. Yes, sir.

Q. Were the votes taken by standing or by paper ballot?

A. By standing vote.

Q. They said "All who favor Mr. Collins will please stand"?

A. Yes, sir.

Q. And then "All who favor Mr. Holmes will please stand?"

A. Yes, sir.

Q. And in that way they arrived at the will of the assembly, did they?

A. Yes, sir.

Q. And after they had arrived at it, who was
790 elected?

A. Mr. George Holmes.

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Q. Mr. Collins, do you have in mind any nego-
801 tiations with the management of the company with reference to the classifications of employees?

A. I sat in all those conferences with the executive committee.

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Q. (By Mr. Seebirt): Did you make notes of your own with reference to the position of the Association and the position of the management with reference to your negotiations?

A. When we were negotiating the working
802 agreement, I took down some notes as to the information that they submitted to us on some subjects.

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Q. I wonder if you won't relate to the Examiner here some of the reports which you actually made to these men after attending the group meeting or the meeting with the management?

803 A. Well, we sometimes had a division meeting before the minutes came out through regular channels to the division as a whole, and at such a meeting I tried to explain the points of argument between the executive committee and the management on the question

in discussion. Nearly every meeting that we had with the management was either on the working agreement, the proposed working agreement or classification. I tried to give the members in detail the substance of the conference.

Q. Yes. Other than that, what, if any, means did the Association employ and use to keep the members informed of such a negotiation as you are talking about?

A. Why, the secretary of the general council; his duty was to send to the secretaries of the division a copy of the minutes of all meetings with the management.

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805 Q. Mr. Collins, do you have a recollection as to what took place in some of these meetings with the management with reference to a working agreement?

A. I do.

Q. Yes. Do you know how many meetings that you had with the management discussing the working agreement?

A. Not exactly, but I would say four, maybe five.

Q. And was it revised from time to time?

A. It was.

Q. And will you give the Board the benefit of what was said in those meetings with reference to the working agreement?

A. We presented to the management a proposed working agreement and they took it and said they would look it over and when they were ready to confer on it they'd let us know, which they did, and we went in on the following meeting and discussed some parts of that proposed working agreement.

806 Q. How often would you say that it was redrafted or changed before it was ultimately accepted?

A. Oh, I would say four or five times that we had to make different arrangements. It wasn't ever accepted in our—in its originality.

Q. Tell us what the points of disagreement were that were discussed?

A. Well, the points—the question of classification and the question of wages and time, overtime, a pension system that we asked for insurance while during disability, and the question of working conditions was discussed several different nights. I think that embodied the most of the contract, was the thing we were bargaining for.

Q. Now, that working agreement was finally accepted and signed in what month?

A. I think the working agreement was of February 5th.

Q. Of 1938?

A. I think so.

Q. Now, before that was done you may tell the Board whether or not the company got out a written document which it called a declaration of policy?

A. They did.

Q. And you may tell the Board whether or not the company desired to have that accepted in lieu of a working agreement?

A. They did.

807 Q. And what was the result of that suggestion?

A. A—what do they call it?—statement of policy, I believe, was submitted to the membership and was turned down by the membership.

Q. What do you mean by was submitted to the membership? You mean that you carried it around out at the Twin Branch plant and showed it to them and up to Benton Harbor, or what do you mean?

A. No, the division representative or the member of the representative council from that division took the copy back and called the division together and read it to them, and they voted to either accept or reject.

Q. Do you know whether that took place at the different groups?

A. At Twin Branch it did.

Q. And the result that you know about at Twin Branch was what?

A. "No."

Q. What?

A. They refused it.

Q. Why?

A. It wasn't acceptable to the membership.

Q. Well, did you regard it as a contract?

A. No, it was no contract.

Q. Did you want a contract?

808 A. We asked for a contract.

Q. Yes. And did you ultimately get a contract?

A. We did.

Q. Mr. Collins, did you have anything to do with the receipt and transmission of grievances of employees to the management or to a superintendent of the company?

A. Only if they come to the general executive council.

Q. Yes. Under your by-laws I notice that many grievances are settled before they get to the general council, is that right?

A. Yes, sir.

Q. When they weren't settled they came to your general council, did they?

A. They did.

Q. And did you, as a member of the general council, together with the other members, take those grievances to the management?

A. The executive committee from the general council took them, yes.

Q. And you were a member of that?

A. I am.

Q. Yes. Do you recall that a number of grievances were taken to the management by your council, or not?

A. They were.

Q. Yes. And were there a number of adjust-

809 ments made by that negotiation?

A. There was.

Q. Mr. Collins, do you remember that you had a meeting with the management on this working agreement about January 14th, 1938?

A. I imagine we did. I don't know the exact date.

Q. Yes. Well, from what you have already said, I suspect that the working agreement was in some typewritten form at that time?

A. It was, yes.

Q. Yes. Now, on January 21st, did your general council go to any place with respect to this working agreement?

A. The general council or the executive committee?

Q. Well, maybe the executive committee. Do you know whether you went any place?

A. We were called in to the Association's attorney's office, I believe.

Q. You went to whose office?

A. Mr. Voor's office.

Q. Yes. And he was the attorney for your Association at that time?

A. He was.

Q. And was there a discussion in his office with respect to this form of contract that had been worked out to that point—

A. I think so.

810 Q. —up to that date?

A. There was.

Q. And what did Mr. Voor agree to do with your committee as to that form of contract submitted to him?

A. I don't recall. I don't know as I remember what was said at the meeting.

Q. Well, I desire to show you a copy of the minutes of this Association bearing date of January 22nd, 1938, and ask you to look at it and refresh your recollection upon the subject, reading the first paragraph there.

A. Well, this was a night meeting. Yes, I attended that meeting.

Q. You remember that now?

A. I attended that meeting, yes.

Q. And what did Mr. Voor say that he would do with respect to that working agreement?

A. I think he revised the working agreement at that time.

Q. Well, had he revised it or did he say he would revise it?

A. He said he would revise it.

Q. Yes. And was that statement made after there was a discussion among the committee and himself? —

A. Yes. As I recall now, the meeting with Mr. Voor

was to get some information from—on one department of the company as to what they wanted in the con-
811 tract for their benefit.

Q. Yes. Was there any member of the management, any general manager, vice president or superintendent of the company present at that meeting?

A. No, that was a linemen's meeting at that time.

Q. That was a linemen's meeting. And was that contract which Mr. Voor drew, was it the contract that was finally signed?

A. I believe it was.

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Q. (By Mr. Seebirt): Now, you don't answer my
813 question. My question is whether or not you accepted their contentions without any debate or argument or whether there was argument and dissents between you and the management over the points that were up for discussion.

A. We discussed the points pro and con at some length. I am trying to get you to understand that the executive committee didn't have the right to accept anything.

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Q. (By Mr. Seebirt): Who is your immediate superior? To whom do you report?

A. R. C. Dietrich, the Watch Engineer.

Q. Who?

814 A. R. C. Dietrich.

Q. Dietrich. And who is his superior?

A. Harry L. Gibbons.

Q. Are all of these men that you have mentioned, including yourself, under George Schmidt?

A. Yes, sir.

Q. Yes. His position out at Twin Branch is known as what?

A. I think he is Superintendent of Power.

Q. And Mr. Schmidt reports and responds to whom?

A. Mr. English.

Mr. Seebirt: Mr. English. That is all.

RE-DIRECT EXAMINATION

Q. (By Mr. Reynolds): You say Mr. Gibbons is Superintendent of Power?

A. No.

Q. Or Mr. Schmidt?

A. Mr. Schmidt is superintendent of power.

Q. What is Mr. Gibbons?

A. The Senior Watch Engineer.

Q. How many men does he have supervision over?

A. Mr. Gibbons?

Q. Yes.

A. He is Superintendent of the Operating Crews at Twin Branch.

Q. How many men does Mr. Dietrich have
815 supervision over?

A. Five, maybe six, whatever is on his crew.

Q. Is Mr. Dietrich a member of the Association?

A. He is.

* * * * * * * * * *

Q. How many watch engineers do you have in
818 the Twin Branch Division?

A. Four regular and one relief.

Q. And I believe you stated that these watch engineers have the status of foremen?

A. They are responsible for the operation of the plant during the shift they are on duty.

Q. Of the entire plant?

A. Of the turbine room—of the operation of the steam side of the plant, yes.

Q. How many are employed on the steam side of the plant?

A. Our regular operating crews.

Q. And how many are there on each crew?

A. Well, wait until I count. I think there is six regular, five regular and one utility man on each shift, and then on the day turn there is two or three extra.

Q. Who are the four regular watch engineers
819 and the one relief watch engineer at the Twin Branch?

A. R. C. Dietrich, Thomas C. Martz.
Q. What is his name?
A. Thomas C. Martz, Walter Bosscawen.
Q. How do you spell his name?
A. I don't know.
Q. Will you pronounce it again?
A. Bosscawen, B-o-s-s-c-a-w-e-n, I believe it is.
Mr. Deahl: B-o-s-c-o-w-n, is suggested as the correct spelling.
Q. (By Mr. Reynolds): And there are two others, are there not?
A. Roy Brunson is a regular and F. A. Hall is the relief.
Q. Are all five men members of the Association?
A. I don't know.
Q. Mr. Bosscawen is W. L. Bosscawen?
A. Walter L.
Q. He resides at Mishawaka?
A. He does.
Q. Mr. Brunson is B-r-u-n-s-o-n?
A. B-r-u-n-s-o-n, yes.
Q. Roy Brunson?
A. That is it.
Q. Lives at Mishawaka, is that correct?
A. He did. I think he lives in South Bend now.
820 I wouldn't say for sure.
Q. Mr. Martz is Thomas C. Martz?
A. Yes, sir.
Q. And his address is Mishawaka?
A. Yes, sir.
Q. Mr. Hall is Mr. F. J. Hall?
A. Yes, sir.
Q. And his address is also Mishawaka?
A. Yes, sir.

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RE-CROSS EXAMINATION

842 Q. (By Mr. Seebirt): In some of those meetings in which you were negotiating the working agreement with the management, was there some other

person than the members of your committee attended and conferred with the management?

A. We had our attorney with us.

Q. Mr. Voor was present at most of those meetings?

A. Yes.

Q. The second question is whether or not any contribution has been made to your treasury or to any other treasury of this Association by the management, either directly or indirectly?

A. None whatsoever, to my knowledge.

Q. Has it received anything of value from the management that you can think of or know of?

A. No.

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Q. (By Mr. Seebirt): Well now, while we have
846 brought this matter in, do you know whether the company paid for any picnics or parties or anything of that sort?

A. No, my information is that they kick in a half a dollar apiece.

Q. When you say they, who do you mean?

A. The guys that attend the party.

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ALBERT OTIS,

847 a witness called by and on behalf of the National Labor Relations Board, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

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Q. (By Mr. Reynolds): Now, at a later time did
849 ony one else speak to you about the Association?

A. Several of them spoke to me about it, and the foreman I was working for at the time asked me to come to the meeting.

Q. Who was that?

850 A. Masten.

Q. Did you go to the meeting as he requested?

A. I did.

• • • • • • • • • • •

Q. Were you a member of the Brotherhood dur-
857 ing the time that you were working for the Indiana Public Service?

A. Yes, sir.

Q. When was it that you joined the Brotherhood?

A. I don't remember.

Q. Give us your best recollection.

A. I would have to look it up.

Q. Just give us your best recollection. You had a pretty fair recollection about the dates on some of these other dates.

A. Well, I would say about the first of the year, '35; maybe a little before.

Q. About January, '35?

A. A little before. Yes.

Q. Have you remained a member of the Brotherhood ever since?

A. I have.

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Q. When was it you left the employ of the
858 Indiana & Michigan Electric?

A. August 13th, 1937.

Q. You left voluntarily?

A. I did.

Q. Was there anything regarding your employment that was unsatisfactory to you?

A. Yes, sir.

Q. That you had called to the attention of your foreman or any one over you?

A. Yes, sir.

859 Q. And what was that that you had called to their attention?

A. Ten hours a day straight time—

Q. Well, first let me get at it this way.

Who was it you talked to?

A. Masten. That was my foreman.

Q. Masten?
A. Yes.
Q. And when was it you talked to him?
A. About every day.
Q. And was that in the presence of any other persons?
A. Sure.
Q. Now, what was it you told Mr. Masten?
A. Rather have time and a half after eight hours or double time; not making up holidays by working nine hours a day, an hour later every evening, and an hour Saturday forenoon.
Q. And what else did you tell him?
A. I forgot all the rest I told him.
Q. Is that the only thing that you recall now?
A. Yes.
Q. Now, let's see about that. Was this situation about which you were complaining any different with the other employees than it was with you, or was that a matter that applied generally to the men working in the same classification as you?
A. That applied to the men working the same.
360 Q. Same classification. It didn't apply to just you personally?
A. No.
Q. Did you have a position at the time you left the Indiana & Michigan Electric Company?
A. The next day.
Q. Where was that?
A. Gary Heat, Light & Water.
Q. The Gary Heat, Light & Water. And you are still working there?
A. No.
Q. How long did you work at the Gary Heat, Light & Water?
A. Oh, about six months.
Q. What sort of a position did you have there?
A. Lineman.
Q. The same as you had at the Indiana & Michigan Electric?
A. Yes.

Q. What rate of pay as compared with that you were receiving at the Indiana & Michgian Electric?

A. I got $215 a month guarantee.

Q. More or less than you had been receiving?

A. More.

Q. More. And you left six months later?

A. Yes.

861 Why?

A. Layoff.

Q. No complaint against you or your work, was there?

A. I guess not.

Q. Well, let us not guess about it. What is the fact?

A. No.

Q. That's the way I like to have you answer. Then where did you go to work?

A. Cities Construction Company.

Q. Where?

A. Cities Construction Company.

Q. Cities Construction Company. And where is that located?

A. Hammond, Indiana.

Q. And what sort of a position did you have there?

A. Lineman.

Q. Is that a utility?

A. No. It is a construction company.

Q. Are you still with that company?

A. No.

Q. When did you leave that company?

A. Oh, sometime in April. I don't know.

Q. Were you laid off there too?

A. Yes.

Q. There wasn't any complaint there either, was there, about your work?

A. No.

862 Q. You left in April of what, 1938?

A. Yes.

Q. And about how long had you been there?

A. Well, about three months.

Q. Then where did you go to work?

A. Illinois & Iowa Power Company.

Q. What?

A. Illinois & Iowa Power Company.
Q. And where is that located?
A. Danville, Illinois.
Q. That's a public utility, isn't it?
A. I believe it is.
Q. And when did you go to work there?
A. Oh, I don't recall just when it was; June, I guess, July.
Q. That hasn't been so long ago. Can't you remember whether it was June or July?
A. It was July, I believe. About the 1st of July.
Q. Are you still with that company?
A. No.
Q. You were laid off there too, were you?
A. No, I quit there.
Q. You quit there?
A. Yes.
Q. What was the trouble there?
863 A. Oh, I had a better job.
Q. I see. When was it you quit?
A. August 8th, I believe.
Q. And then where did you go to work?
A. City of Chicago.
Q. And who are you working for in the City of Chicago?
A. The City of Chicago.
Q. The City of Chicago?
A. Yes.
Q. And what do you do for the City of Chicago?
A. Lineman.
Q. You are still working for the City of Chicago, aren't you?
A. Sure.
Q. You haven't been laid off there yet?
A. No.
Q. And when did you go to work for the City of Chicago?
A. About August 9th.
Q. The next day after you left—
A. That is right.
Q. —The Illinois & Iowa Power Company.

Now, during all of these jobs with different companies that you have had, you have kept up your dues and remained a member in good standing in the Brotherhood, have you?

A. Oh, sure.

864 Q. Now, when you made application for a job with the Indiana & Michigan Electric Company in April of 1935, what did you represent as to the type of work you were capable of doing?

A. Distribution work.

Q. Did you tell them that you were a lineman?

A. I did.

Q. Did you tell them that you were a first class lineman?

A. I did.

Q. And you had only been working as a lineman for a period of about one year previous to that, or less than a year, as a matter of fact?

A. About five years.

Q. My understanding now, according to your testimony, and if I am wrong, you correct me, is that the first position of employment you had was with the Public Service Company of Indiana.

A. I never told you that.

Q. I am sure the record will show that.

Now, if you want to change it, that's quite all right. Are we to understand now that you did have employment prior to the time that you were employed by the Public Service of Indiana at Columbus?

A. Yes, sir.

Q. Then tell us who it was you were working for just prior to your employment with the Public Service of Indiana?

865 A. The Ohio-Illinois Power Company. This wasn't just prior. There was a time elapsed between that of about a year.

Q. Well, in other words, from about April, 1933, until April, 1934, you were not employed?

A. That is right.

Q. Now, prior to April of 1933 who was it you were employed by?

A. The Ohio Electric Power Company.

Q. And where is that located?

A. Sidney, Ohio, headquarters. I was all over the state.

Q. And how long did you work for that company?

A. Two years and one day.

Q. You've got that one now. How do you know it was just two years and one day?

A. I got a good rememberer on that.

Q. What is it that causes you to have a particularly good memory about that one and not about the others?

A. Well, an incident happened that isn't any affair of the court.

Q. Well, we'll respect that.

So that you then went to the Ohio Electric Power Company about April, 1931, is that right?

A. It was about January.

Q. Well, then it wasn't just two years and one day, was it?

A. It was two years and one day, to be exact,
866 that I worked for them.

Q. Yes. Then it wasn't April of 1933,—

A. No, it was maybe—

Q. —or 1931?

A. Maybe a little more time elapsed between the time I worked for them.

Q. Well, it wasn't April, 1933, that you left there, was it? You went to work in January and remained two years and one day.

A. It would have to be January, sure.

Q. Yes. Then it would be sometime in January, 1933, that you left the Ohio Power Company, is that right?

A. That is right.

Q. The period is clear in your mind but the dates are not so clear?

A. That is right.

Q. What work was it that you did while you were there?

A. Lineman.

Q. Why did you leave there?

A. Layoff.

Q. Oh, you were laid off there too?

A. Sure.

Q. Now, where did you work prior to your employment with the Ohio Electric Power Company?

A. Pennsylvania Railroad.

Q. When was it you started to work for the
867 Pennsylvania Railroad?

A. I believe it was in October or November; I wouldn't say for sure. I only worked there for about a month.

Q. About a month?

A. Yes. I got too cold.

Q. Where was it that you worked?

A. Out of the Fort Wayne Division.

Q. What city were you living in at that time?

A. I wasn't living in no city; in a camp car.

Q. Where was the camp cot located?

A. Along the right-of-way.

Mr. Deahl: Oh, camp what? I beg your pardon?

The Witness: Along the right-of-way.

Mr. Seebirt: Car, I think he said.

Q. (By Mr. Deahl): Camp car, did you say?

A. Yes.

Q. Where was that located with respect to the nearest city or town of any size?

A. Well, anywhere between Crestline and Valparaiso up here. That was our territory. Crestline, Ohio, and Valparaiso, Indiana.

Q. What would be the post office of that camp?

A. Wherever they stopped at.

Q. What?

A. Wherever they stopped at.

868 Q. Yes, I understand, but where would you get your mail?

A. Well, maybe you didn't get any. Just where they stopped at. If you had your mail sent to that post office, you got it.

Q. This camp, then, if I understand correctly, was moved from place to place, is that right?

A. Very frequently.

Q. And moved frequently?

A. That is right.

Q. How many times did you move with that camp?

A. Well, moved every day.

Q. Moved 30 times, then, over a period of a month?

A. No, I only worked five days a week.

Q. What office did you work out of—

A. Fort Wayne.

Q. —while you were working for the Pennsylvania?

A. Fort Wayne.

Q. And why did you leave the employment with the Pennsylvania? Were you laid off there too?

A. No. It got too cold in that camp car, chilly at nights, no fire, bad.

Q. You prefer warm weather where you work?

A. No, I don't mind sleeping in a camp car, but I like to have a little fire in it. The steam plant was broke down, I guess.

Q. Where were you employed prior to your
869 employment with the Pennsylvania Railroad?

A. Ohio Power.

Q. Oh, you had been with the Ohio Power before? How long were you employed by them this time?

A. I never was with them—that was the Ohio Electric Power.

Q. I beg your pardon. This is the Ohio Power. That is a different company?

A. Ohio Power.

Q. Where is that located?

A. Van Wert, Ohio.

Q. How long were you with them?

A. That's been so long ago I almost forgot. About a year or two. I don't remember. I was with them two different times.

Q. And what work did you do with them?

A. Lineman.

Q. Why did you leave there? Were you laid off there too?

A. Laid off.

Q. Laid off both times?

A. Yes. No, I quit them the first time. I was laid off the last time.

Q. You have had more than your share of layoffs, haven't you?

870 A. Yes.

* * * * * * * * * *

Q. Who was your foreman when you were here?

871 A. Masten was most of the time.

Q. Ever have any trouble with him?

A. I guess not.

Q. Well, now, I would rather not guess about it, if you can tell us.

A. What do you call trouble?

Q. Oh, well, now, you have been around enough to know what trouble is, haven't you?

A. I never had any trouble with him.

872 Q. It seems to me that you have had more than your share of it.

Did you have any difficulty?

A. No.

Q. Any arguments?

A. No.

Q. With Mr. Masten?

A. Not bad.

Q. Well, did you have any?

A. No.

Q. Then why do you say not many?

A. Well, oh, you know, a little argument once in a while. It didn't amount to anything.

Q. It wasn't of sufficient consequence to be able to recall what it was about?

A. No.

Q. Did you ever go to him with any complaints about your working conditions?

A. I answered that before.

Q. You what?

A. I answered that before.

Q. Well, I am sorry, I forgot. Will you answer for me again, please?

A. Yes.

Q. What was it you told him?

873 A. About working overtime for no extra pay.

Q. Now, that's the time when you were out on Buttercup Road or Edwardsburg Road?

I don't believe the reporter can get the answer when you just shake your head.

A. That wasn't the time.

Q. What time was that?

A. Oh, I don't recall. About maybe once or twice a week we would fetch up.

Q. It was more or less chronic, then?

A. Yes, that is what it was.

Q. You just more or less sort of kept this thing going?

A. Yes.

Q. And that, as you recall, related to a matter that applied to all of the linemen as well as yourself?

A. It always did, yes.

Q. Did you ever make any complaint to him about any matter pertaining to yourself alone?

A. I don't believe I did. No, I didn't.

Q. There wasn't anything happened while you were there in the company that caused you to feel there was any discrimination against you individually, was there?

A. Yes, there was.

Q. Now, let's have that, what was it?

874 A. Well, about the time we had our first meeting, we had been getting overtime now and then.

Q. Now, let's fix that a little better if you will, please. You say about the time that you had your first meeting. What meeting do you refer to?

A. The first meeting of the A. F. of L., the Brotherhood.

Q. About when was that?

A. The first part, about the middle of April, I guess, or it was about the latter part.

Q. All right, go ahead.

A. I had been getting a little overtime and so had quite a few of the boys. After this meeting it all stopped.

Q. Never got any after that?

A. No, sir.

Q. Now, unless we would be caught out late on the job, which didn't matter too much.

Q. Well, you did get some then?

A. I don't recall whether I got any or not.

Q. Then, why did you say unless we got caught out late?

A. Well, if we were caught out late we might have got some.

Q. Then when you say that you didn't get any, you mean that you don't remember whether you got any, isn't that right?

A. Yes, that is right.

Q. You were mistaken about that before, weren't you? You don't want us to understand that you didn't get any?

875 A. Well, I can't be sure.

Q. Yes. Now, did you feel that that was any cause for complaint?

A. I did.

Q. And did you complain to Mr. Masten about it?

A. I did.

Q. Then you did complain to Mr. Masten about more than this one matter?

A. Oh, all the time, yes.

Q. Oh, you were complaining all the time?

A. Sure.

Q. You want us to understand now you were just keeping up a run of complaints all during the time that you were there, is that what you did?

A. If it was necessary I did, yes.

Q. When you were with these other companies you felt the same way, you made complaints there?

A. Always.

Q. And then you would get laid off?

A. That is right.

Q. That was even when you were not a member of the A. F. of L., too, wasn't it?

A. That is right.

Q. Now, you say that you did complain then to Mr. Masten about this matter of overtime?

A. That is right.

876 Q. Are you tired?

A. No, no.

Q. What do you keep yawning for?

A. Too little sleep, didn't have enough sleep last night.

Q. I see. Well, don't let me press you too hard. When was it that you talked to Mr. Masten?

A. I don't remember.

Q. Have you no recollection at all?

A. Not, not the absolute date.

Q. Can you give us one instance?

A. No.

Q. Or even if you can't tell us the time, tell us the place and who may have been present.

A. Never.

Q. Your recollection or your memory is just blank on that?

A. Yes.

Q. Are you quite sure that you spoke to him about it?

A. I am.

Q. What makes you sure, just because you made a practice of complaining?

A. That is right.

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Q. What place or what company—I will just
879 wait until he gets through yawning—what company had you been working for where you had received more pay?

A. Briggs Bodies.

880 Q. That is a new one?

A. Yes, that is a new one.

Q. You just keep pulling them out, and you haven't got a hat either. Did you get laid off from the Briggs Body, too?

A. No, I quit them.

Q. You quit them. What for, was it too cold up there?

A. Yes, that is right.

Q. Now, if I understand your testimony on direct examination correctly, you said that you were approached by a Mr. Havlin and asked to become a member of the Association, is that right?

A. That is right.

Q. That is while you were an employee of the Indiana & Michigan Electric?

A. Yes.

Q. And what did Mr. Havlin say to you at the time that he asked you to become a member?

A. I don't recall.

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CLAUDE F. BUCKLEY,

a witness called by and on behalf of the National Labor Relations Board, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q. (By Mr. Reynolds): State your name and address, please?

A. Claude F. Buckley, 7818 South Shore Drive, Chicago.

Q. Were you ever employed by the Indiana & Michigan Electric Company?

A. I was.

Q. When did you work for that company?

897 A. From 1935 until August, I believe, 1937.

Mr. Seebirt: Wait just a minute. Will you read that answer?

(Answer read.)

Q. (By Mr. Reynolds): Are you a member of the International Brotherhood of Electrical Workers?

A. Yes, sir.

Q. When did you join the brotherhood?

A. Well, the first time I joined the Brotherhood was in 1903, 1905, I guess it was, I wouldn't say positive. It was a long time ago.

Q. And you allowed your membership to lapse and rejoined later?

A. I did.

Q. When did you rejoin?

A. About two years, ago, two and a half, something like that.

Q. Were you employed by the Indiana & Michigan Electric Company at the time?

A. I was.

Q. Were you at any time solicited for membership in the Michiana Association?

A. I can't say that I was.

Q. Did you ever attend any meeting of the Association?

A. I tried to attend a meeting a couple of times.

898 Q. On the first occasion tell the Examiner what happened.

A. Well, it was a meeting held over here on Hill Street, in I believe a Catholic school or some place, I don't know just the building, and previous to that I was working for Matsen and I asked him for one of the cards, you know, the membership cards or applications or whatever it was, and he didn't have any at the time.

Well, during the morning some time Mr. Livelsberger came out on the job and I believe that he brought it out; now, I don't know, but I signed the card up or the application and gave it to Matsen.

Q. Masten, do you mean, the foreman?

A. Yes, sir.

Q. Was he your foreman?

A. Yes, at that time.

* * * * * * * * * *

CROSS EXAMINATION

902 Q. (By Mr. Seebirt): What are you doing for the City of Chicago?

A. Working as a lineman.

Q. How long have you worked for the City of Chicago?

A. Since the 20th day of June this year.

Q. The 20th day of June. Where did you work before the 20th day of June?

A. I worked for a contracting concern.

Q. What is the name of that concern?

A. Reid Electric.

Q. Reid Electric?

A. That is right.

Q. In what place?

A. In Chicago.

Q. When did you start to work for them?

A. Oh, I imagine it was along in the first part of April. I was with them possibly five or six weeks. I don't just exactly remember.

Q. April, 1938, is that right?

A. That is right.

Q. Who did you work for prior to that?

A. Prior to that I worked for another contractor.

Q. What was the name?

A. John J. Breslin.

Q. B-r-e-s-l-i-n?

903 A. That is right.

Q. In Chicago?

A. That is right.

Q. When did you go to work for John Breslin?

A. I worked for him about two or three weeks.

Q. And that would take you back perhaps into March of 1938?

A. That is right.

Q. Who did you work for before that?

A. Gary Heat and Water.

Q. When did you go to work for Gary Heat and Water Company?

A. Right shortly after I left this company in August.

Q. That was in August, 1937, is that right?

A. That is right.

Q. Are you a married man?

A. I am.

Q. How long have you lived in the city of Chicago?

A. I have lived there since last—I believe it was April or May. I don't know just when it was I moved there.

Q. Are you an organizer for the Brotherhood? Have you been in the employ of Michael J. Boyle of Chicago?

A. No.

Q. You know him quite well, do you not?

A. I know him, yes.

Q. You first joined the brotherhood in 1903 and
904 then after about two and a half years you rejoined, is that correct?

A. No, I just joined this last time two years ago.

Q. Oh, I beg your pardon. That is right. My notes are imperfect. You were not a member from 1903 until about 1935, or something like that?

A. It wasn't that long.

Q. Tell us about the period that you were not a member.

A. I was a member from about 1903 or 1905, if I had the credentials I could show you, but I have not, I was a member in good standing up until 1926.

Q. Oh, you were?

A. Then I lapsed during 1926.

Q. And you became a member in good standing again when?

A. I believe it was two years ago.

Q. And then you were in the employ of the Indiana & Michigan Electric Company?

A. I was in the employment of the Indiana & Michigan.

Q. When did you become an employee of the Indiana & Michigan?

A. Well, I wouldn't say positive, but I believe it was the 3rd day of July, 1935.

Q. To whom did you apply for employment in this company?

A. G. J. Blair. Butler, Indiana.

Q. You were employed in Butler at the time?

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Q. Now, you asked Mr. Masten for a card to
910 attend the May 20th meeting, didn't you?
A. Yes.
Q. And he gave you one.
A. That is right.
Q. And you signed it?
A. I did.
Q. And that was the card that was lost?
A. I don't know. I suppose it was lost. I never seen it afterwards.
Q. At any rate, it never turned up any place?
A. That is right.

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RE-CROSS EXAMINATION

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Q. Do you know this man Otis?
917 A. I do.
Q. You are associated with him in Chicago, aren't you?
A. No, sir.
Q. You are friends in Chicago?
A. Well, he lives in one place and I live in another.
Q. You frequently meet, though?
A. I haven't met him before for four months.
Q. Do you work in the same department in the city of Chicago?
A. Same department, but in different crews.

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WALTER HULWICK,

920 a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

* * * * * * * * * *

Q. Are you a member of the International
921 Brotherhood of Electrical Workers?
A. I am.
Q. When did you join?

A. A year ago last September.

Q. Prior to a year ago last September were you ever solicited for membership in the Michiana Association?

A. Well, I can't say that I was.

Q. Any one ask you to join the Michiana?

• • • • • • • • • • •

Q. Did you ever have any conversations with
924 Mr. Strock about the union?

A. Well, yes. Johnny Marks and I was out one night to his house.

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CROSS EXAMINATION

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Q. So that when the Association here was
928 formed in May, 1937, you had no connection with any other union?

A. No.

Q. Now, the first that you heard about the formation of this Association was from Mr. Strock, when you were on the job one day?

A. That is right.

Q. You had been working about two hours and Mr. Strock began talking about the formation of an Association, is that right?

A. No, we had just went out on the job.

Q. You just went out on the job?

A. Yes.

Q. Were you riding in the truck when he was talking?

A. No.

Q. You had gotten to the job and had gotten out of the truck at the place of work, is that right?

A. Yes.

Q. How many men were there with you?

A. I think there was five.

Q. Who were they?

A. Well, there was Charley Daly, and Don Moran, Paul Glawe and myself and Mr. Strock.

Q. Was this before the hour of starting to work or not?

A. No.

Q. Were you working while this conversation
929 was going on?

A. No.

Q. You all sat down on the job to listen to him?

A. That is right.

Q. How long did this conversation take place?

A. About two hours.

Q. He talked to you for two hours?

A. That is right.

Q. Yes, and none of these five men did any work at all then during the five hours or two hours?

A. No.

Q. When you say no, you mean that they did not do any work during the two hours?

A. They did not.

Q. I suspect you sat down in the grass along the road, did you?

A. That is right.

Q. And Mr. Strock explained what it was all about, didn't he?

A. Yes.

Q. He told you that he thought it would be a good thing and for the interest of the men?

A. Yes.

Q. I suspect he told you that he felt that it would not be a good thing for the employees to be required to join some other union such as the C. I. O. or the American Federation of Labor, is that right?

930 A. Yes.

Q. And he asked these four men whether or not they would be favorable to the formation of such an Association?

A. Yes.

Q. And did anybody say that they would not?

A. No.

Q. And they all agreed to it, did they?

A. Yes.

Q. Yes, and there was no argument about the subject at all.

A. Well, there was a little discussion about it. I wouldn't say there was any argument, however.

Q. Well, what was the discussion?

A. Just what it was for and how long it was going to be run and things along that line.

Q. Yes. When I say "argument" you didn't say to him in sum and substance "I am unfavorable to this proposition," did you?

A. I did not.

Q. You said to him that if he got a card that you would sign one?

A. I did.

Q. At that time he didn't have any cards?

A. No.

Q. But later Mr. Strock got some?

A. He did.

931 Q. Was that before or after the meeting of May 20th?

A. Well, I am not sure, but I think it was afterwards.

Q. That you signed a card?

A. Yes.

Q. So that when you attended the meeting of May 20th you had not signed any card?

A. No.

Q. And you did attend the meeting on May 20th, didn't you?

A. I did.

Q. And stayed throughout the meeting?

A. I did.

Q. Who went to the meeting with you if anyone?

A. Well, all of us on that truck went.

Q. Yes, and in the meeting did all you men from Butler sit in one group?

A. We did.

Q. Now, after that meeting you signed a card and gave it back to Mr. Strock?

A. I did.

Q. You paid a dollar and later paid dues of 50 cents?

A. That is right.

Q. I think you say that you saw no one collecting dues

for this Association while working on the job, is that right?

A. That is right.

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Q. And you went up to Mr. Strock's home to
933 talk about the Brotherhood, didn't you?

A. I did.

Q. Who went with you?

A. Mr. Marks and Mr. Anderson.

Q. Mr. Marks, the gentleman who is here in this hearing?

A. That is right.

Q. What Mr. Anderson is that?

A. Charles Anderson.

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Q. Now, you and Anderson and Marks went up
936 to see Mr. Strock, did you?

A. Yes.

Q. And now in that meeting you asked him what he thought about the Brotherhood, is that right?

A. Yes.

Q. And you went up there for the purpose of interesting him in membership in the Brotherhood, didn't you?

A. That is right.

Q. And you told him that you thought that would be a very much better organization to represent the employees than the Association, is that true?

A. I did.

Q. That was the conversation of Mr. Marks and Mr. Anderson and yourself?

A. That is right.

Q. Anderson joined in this conversation urging Mr. Strock to join the brotherhood?

A. I wouldn't say whether he urged him to join. He asked him to come to a meeting.

Q. Asked him to come to the meeting, and of course, the purpose in asking him to come to the meeting
937 was that he would ultimately become a member, wasn't it?

A. Yes.

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Q. Now, after attending the meeting of May
939 20th at South Bend—you attended two other meetings of the Association with employees at Butler?

A. That is right.

Q. Those two meetings were meetings of the Butler group?

A. Yes.

Q. Yes, and the employees of the company from no other part of the company were present?

A. No.

Q. And Mr. Strock presided at those meetings?

A. Yes.

Q. There wasn't anything improper at those meetings, was there?

A. Not that I seen.

Q. No, and when did Mr. Strock cease to be the presiding officer of that group, we will call him chairman.

A. Well, I think it was about—he was president or chairman or whatever it was about a year, I think.

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FORREST ELKINS,

a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q. (By Mr. Reynolds): State your name and address, please.

A. Forrest Elkins, Wabash, Indiana.

Q. Were you formerly employed by the Indiana & Michigan Electric Company?

A. I was.

Q. When was the last day on which you worked for the company?

A. December 31st, 1937.

Q. The 31st, was it?

A. Yes, sir.

Q. Prior to December 31st, 1937, how long had you worked for the company?

A. I started on May 13th, 1937.

Q. And what was your occupation?

A. Substation maintenance.

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Q. After you became employed by the Indiana
944 & Michigan Company did you become a member of the International Brotherhood of Electrical Workers?

A. Yes, sir.

Q. When did you join the Brotherhood?

A. I joined the Brotherhood on December 13th, 1937.

Q. After you joined the Brotherhood did you engage in any activities on behalf of the Brotherhood?

A. I did, after working hours.

Q. Now, tell the Trial Examiner what you did.

A. Well, after working hours one Saturday or Sunday I went around to some of the employees' homes and talked to them to see what they had to say about it, tried to encourage them into the Brotherhood.

Q. Did you go to other localities besides the one where you were working?

A. No, sir.

Q. How many employees did you contact that way?

A. Oh, I wouldn't say the exact number. Maybe seven or eight.

Q. Now, you say you left the company on the 31st of December?

A. That is right.

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Mr. Seebirt: Said that your brother, Paul Sny-
947 der?

The Witness: Albert O. Snyder.

Mr. Seebirt: Who else?

The Witness: Paul Robison.

Mr. Seebirt: And you?

The Witness: Yes, sir.

Q. (By Mr. Reynolds): Had your brother been active for the International Brotherhood?

A. He had.

Q. What had he done?

A. Well, I couldn't say exactly what he done. He was the first man that contacted me in coming into the International Brotherhood meetings.

Q. And was he employed by the company at the time you left?

A. He was a foreman for the Indiana & Michigan Electric Company.

Q. Is he working there now?

A. No, sir.

Q. How did he happen to leave?

A. Due to illness of his wife he left around the last part of November. I don't know the exact date.

Q. 1937?

A. Yes, sir.

Q. Now, who is this Mr. Robison?

A. He was a lineman working for the Indiana & Michigan Electric Company at the same time.

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CROSS EXAMINATION

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950 Q. Yes. Now, to whom did you apply for employment?

A. Virgil McClure.

Q. I see. And you talked with Virgil McClure at that time, did you?

A. Yes, sir.

Q. And what did Virgil McClure tell you about your employment?

A. At that time he said, "We have a chance to employ you as temporarily."

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962 Q. Well, as a matter of fact, both Albert O. Snyder and Paul Robinson had voluntarily ceased their employment with the company in November, 1937, hadn't they?

A. That is right.

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Q. Who asked you to join?

968 A. Well, I don't think anybody asked me to join. There was—Mr. Carlton came up to the Riverside Sub-station and left application there for each one of us, and I believe we talked it over amongst ourselves and we agreed to sign up and see what it was all about.

Q. Did you pay any dues into the Michiana?

A. I paid a dollar and a half.

Q. Who to?

A. I don't recall who I paid the dollar to.

Q. Who did you pay the half dollar to?

A. I paid the half dollar to the office manager in Benton Harbor, in the office at Benton Harbor.

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Q. Are you referring to your brother Mr.

974 Snyder?

A. That is right.

Q. Did he have an office in the I. B. E. W.?

A. He was a line foreman.

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A. I believe the first one I attended was in

975 October.

Q. In 1937?

A. Yes, sir.

Q. When did you apply for membership in the Brotherhood?

A. In November, sometime.

Q. That is 1937?

A. Yes, sir.

Q. To whom did you give your application?

A. John R. Marks.

Q. Can you tell me about how often you went to union meetings?

A. About once a month.

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997 E. J. ERNST,

a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was ex-
998 amined and testified as follows:

DIRECT EXAMINATION

Q. (By Mr. Reynolds): Give your name and address, please.

A. E. J. Ernst.

Q. What is your address, Mr. Ernst?

A. Buchanan, Michigan, Rural Route 1.

Q. Are you employed by the Indiana & Michigan Electric Company?

A. Yes.

Q. How long have you worked for the company?

A. Since February, 1930, except 16 months.

Q. What 16 months were you away from the company?

A. Between '32 and '33. I went to work in September or October of '33.

Q. What was your occupation?

A. The first employment was office work.

Q. Where did you work in the office?

A. Twin Branch power plant.

Q. And after you came back following the 16 months, you were on a different job?

A. Yes. I hired out as a mechanic in the garage, and was transferred to the tree trimming crew.

Q. And you have been on a tree trimming crew since that time?

A. Yes.

999 Q. And you are at present?

A. Yes.

Q. Who is your foreman?

A. Ross Lillard.

Q. Are you a member of the International Brotherhood of Electrical Workers?

A. I am.

Q. When did you join?

A. January 3rd, last year.

Q. 1938?

A. No, this year. This year, 1938.

Q. This year. Did you at any time ever sign an application for the Michiana Association?

A. I did.

Q. Do you recall when that was?

A. In May of 1937.

Q. Do you recall what date?

A. No, I do not.

Q. Who asked you to sign for the Michiana?

A. Jack Bentley approached me one day while at work.

Q. Were you on the job at the time?

A. I was.

Q. And where were you working at that time?

A. Between Berrien Springs and Benton, on 31.

Q. Did Jack Bentley work on that same crew?

1000 A. No.

Q. Did he work in that neighborhood?

A. No.

Q. Did he talk to any one else besides you?

A. He talked to all of us on our crew.

Q. What do you recall that he told you?

A. I didn't hear all the conversation. I was in the cab at first, and they called me. I got around in time to see the boys signing their names on the slip of paper he had, and it was a slip, "We, the older employees—" It started out like that. And he said there would be an association formed, or a club—he put it—association or a club for the benefit of the older employees. And that's about all I remember him saying.

Q. Did you have a foreman with you at that time?

A. Yes.

Q. Who was that?

A. Ross Lillard.

Q. Did Mr. Lillard sign a paper too?

A. I couldn't say. I couldn't say whether the foreman was with us at that time. I'll take that back.

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Q. You mean you were a collector of dues?

1001 A. Yes, I was a group chairman, appointed by our group.

Q. Where were you appointed group chairman?

A. In Benton Harbor, in one of the boy's rooms we had a meeting.

Q. And what were your duties as group chairman?

A. To take charge of our group meeting and collect dues, initiation fees. That's all I remember.

Q. Did you collect any dues?

A. I did.

Q. How much, do you remember?

1002 A. I think I collected $12 for applications.

Q. Where did you collect this money, from whom?

A. I collected it from the tree trimmers, all on our crew.

Q. Collected on the job?

A. No, it was at noon hour.

Q. Did you collect any money from your foreman, Mr. Lillard?

A. I did.

Q. Now, how long did you continue to collect money for the Association?

A. I collected applications from each one, making $12, and I collected 75 cents dues from each one, and that's all I ever collected.

Q. You turned this money over to Mr. Edgell, you say?

A. Yes, I turned the dues over to Mr. Edgell too.

Q. Where did you give the money to Mr. Edgell?

A. His office at Benton Harbor.

Q. Now, how did it happen you didn't collect any more money after that?

Mr. Seebirt: Well, now, we are objecting to how it happened he didn't collect any more. I don't see the materiality of it, and it is his conclusion anyhow.

Trial Examiner Dudley: Well, I will let him answer.

The Witness: Nobody would pay me.

Q. (By Mr. Reynolds): You tried to collect?

A. I asked the boys but nobody wanted to pay.

1003 Q. Well, did any officials of the Association talk with you about the situation?

A. Yes.

Q. Who?

Mr. Seebirt: I beg your pardon. Will you read that question?

(Question and answer read.)

The Witness: Ross Lillard.

Q. (By Mr. Reynolds): Is he an official of the Association?

A. He is in charge of tree trimming.

Q. I am asking about officials of the Association, the Michiana Association.

A. I beg your pardon. No, I don't think so.

Q. Well, what did Mr. Lillard say to you about the matter?

A. He came out and asked me if I had collected the dues from the boys. That was in December, about—oh, the first part; between the 1st and the 17th.

Q. Of 1937?

A. Yes. And I told him that nobody was going to pay them, and he asked me if I was going to pay mine, and I said no, that I was riding with the rest of them.

Q. What did he say? Anything more?

A. He didn't say anything more to me.

Q. Well, did you talk with any one else about the matter of collecting dues after that?

1004 A. Yes. Later in January Mr. Lillard approached me again and asked me about what was wrong—our crew and myself didn't pay up our dues.

. . . . . .

1005 Q. (By Trial Examiner Dudley): Can you remember anything more that was said at that time between you and Lillard?

A. Oh, he said that he was afeared that the company might contract tree trimming if things didn't go right, and we might lose our jobs.

Q Anything else said?

A. He agreed to go in and see if he couldn't fix up this loss we took, but nothing was ever done about it.

Q. Did you tell him what that loss was?

A. Yes.

Q. What loss was that?

A. 22 cents a day to myself.

Q. Did you explain what that was about?

A. Yes.

Q. What was it about?

A. We were working nine hours a day and they took one hour away from us a day, and give us a nickel raise.

Q. (By Mr. Reynolds): And that meant a net loss of 22 cents a day to you, didn't it?

A. Yes.

Q. Did you notice any difference in Mr. Lillard's treatment of you after you told him that you couldn't collect any more dues?

1006 A. Only for about two months afterwards, and then it was all right.

Q. What happened for two months afterwards?

A. He wasn't friendly to me for two months.

Q. What do you mean by he wasn't friendly? What were his actions that caused you to believe that?

A. Mr. Lillard and I talked quite frequently, visited together in spare moments, and he would always have a few minutes to talk to me, but from January, then, for about two months, why, he said just "Good morning", and that was about all. Sometimes he never said that.

Q. Now, I want you to describe to the Examiner just what Mr. Lillard's job is and how many men he has supervision over?

A. Mr. Lillard, I understand, is in charge of tree trimming.

Trial Examiner Dudley: Just for some certain division?

The Witness: No, for the entire company, as far as I know.

Q. (By Mr. Reynolds): Now, what does he do? Describe his duties.

A. He has two solicitors working under him. He has two crews. He has two crews of men working under him,

six on our crew, and there is six or seven on the other crew.

Q. And what are Mr. Lillard's activities? Does
1007 he accompany the crews and direct the work?

A. He does not. He has a company car and supervises that way. Comes out.

Q. You mean he drives from place to place?

A. That is right.

Q. Does he do any manual labor himself?

A. Not that I know of.

Q. Well, what does he do when he drives around in this car?

A. Visits the crew and sees how everything is going and brings out supplies, shows where the work is to the solicitors, and rides out and looks over the work that's to be done, and possibly some that has been done.

Trial Examiner Dudley: Is his name Willard or Lillard?

The Witness: Lillard.

Trial Examiner Dudley: L-i-l-l-a-r-d?

The Witness: Yes.

Mr. Reynolds: L-i-l-l-a-r-d.

Q. (By Trial Examiner Dudley): Will you tell me what a solicitor does in this connection?

A. A solicitor has charge of the crew.

Q. Like a foreman?

A. He is just the same as a foreman; push the crew just the same as a foreman does a line crew.

Q. (By Mr. Reynolds): Does the solicitor receive the same rate of pay as a line foreman, or do you know?

A. He does not.

1008 Q. He is a lower paid man?

A. That is right.

Q. Do you know what his rate of pay is?

A. I do.

Q. What is it?

A. 75 cents.

Q. What is the rate for a line foreman, do you know?

A. I understand it is $1.15.

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Cross-Examination

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Q. Now, about this time the company organized
1016 two crews of tree trimmers, didn't it?

A. I believe that is correct.

Q. Then before that the company had done that work by contract, hadn't it?

A. There was not two crews, not at that time, one crew.

Q. You think that one was organized about that time?

A. That is right.

Q. You have that in mind, have you?

A. One crew organized.

1017 Q. And before that the company had done the tree trimming work by contract, hadn't it?

A. To my knowledge.

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Q. Yes. And along in the middle of last year
1018 or a little bit later you were reduced to a service of eight hours, is that correct?

1019 A. Well, it was, I believe in November.

Q. In November, and in November your wage was fixed at what per hour?

A. 67.

Q. And all of the tree trimmers were reduced to a service of eight hours at that time?

A. That is right.

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Q. But you did know that you were all reduced the same, this is I mean the tree trimmers were all reduced at the same time; that didn't apply to you in particular, did it?

A. No.

Q. There wasn't any discrimination with respect to you in that particular, was there?

A. There was not.

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Q. And your whole grievance here arose out of
1020 the fact that after you were reduced to eight hours you got 22 cents a day less than you had gotten before, is that right?

A. That is not correct.

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ERNEST DURFEY,

1025 a witness called by and on behalf of the National Labor Relations Board, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q. (By Mr. Reynolds): State your name and address, please.

A. Ernest Durfey, South Bend, Indiana.

Q. Are you employed by the Indiana & Michigan Electric Company?

A. I am.

Q. How long have you worked for the company?

A. A little over three years.

Q. What is your occupation?

A. I am a Class B Tree trimmer.

Q. That is your present classification with the company—

A. Since the Association, Michiana, yes.

Q. Since the contract, you mean?

A. Yes.

Q. Are you a member of the International Bro-
1026 therhood of Electrical Workers?

A. I am.

Q. When did you join?

A. I don't remember the exact date. It was along the last of December, 1937.

Q. Did you ever at any time sign an application card for membership in the Michiana Association?

A. Yes, I did.

Q. Who asked you to sign for the Michiana?

A. Jack Bentley.

Q. Now, about when did Mr. Bentley solicit you?

A. Well, it was when he was in Benton Harbor and it was in the afternoon sometime we were all called on the back of the truck and Mr. Bentley was there.

Q. Who called you on the back of the truck?

A. I don't recall exactly who it was.

Q. What did Mr. Bentley tell you?

A. He said—he had a paper there and he said that a bunch of the men had decided that they were going to form their own union and keep out the C. I. O.; and he wanted us, and said they were all signing in South Bend and he wanted us fellows to string along.

Q. So, did you sign?

A. I did.

Q. Did you pay any dues or initiation fee?

1028 A. I paid an initiation fee and I also paid I believe, three months. I don't recall paying any more. It might have been six months. I don't recall.

Q. To whom did you pay the initiation fees and dues?

A. I paid them to our group collector, Mr. Ernst.

Q. Did you become delinquent in your dues after that?

A. Yes, I did.

Q. Were you requested to pay up any more

1029 dues?

A. Yes, I was.

Q. Who asked you to pay dues after you became delinquent?

A. I believe, if I remember rightly we were all back three months—

Mr. Seebirt: Who requested you to pay your dues? Is the question.

The Witness: Our group treasurer, Mr. Ernst.

Q. (By Mr. Reynolds): He asked you to pay dues?

A. He asked me if I was going to pay my dues.

Q. What did you say?

A. Well, I said I couldn't spare the money at the time.

Q. Did anyone else speak to you about the dues?

A. Mr. Lillard then told me that it would look better to the company, I was the only one that hadn't paid and it would look better if I paid up my dues, so they were

75 cents and if I remember right I gave him 50 cents and he said "Come on, pay up, if you can't spare the money I will lend it to you." So I said, "All right, I will pay up" and I did.

Q. Now, did you become delinquent after that some time?

A. That is the last dues that I recall paying.

Q. Were you approached at any later time by anybody concerning dues and when?

A. I don't recall anybody asking me for my dues.

Q. Anybody in a supervisory capacity speak to you about the Michiana after that?

1030 Mr. Seebirt: We are objecting to his use of the supervisory capacity. Those are questions for the Board to determine.

Trial Examiner Dudley: I will overrule it. We can find out who it was.

Mr. Seebirt: Just so you don't take it as part of the findings.

The Witness: Would you repeat that question, please.

(Question read.)

The Witness: I was approached and asked why I had dropped, the reason why I dropped my Michiana card.

Q. (By Mr. Reynolds): By whom?

A. By Mr. George Holmes, and the foreman, Mr. Lillard.

Q. They were together at the time?

A. They were.

Q. When was that?

A. I don't recall the exact day, but sometime in January, I believe.

Q. 1938?

A. 1938.

Q. Now, who spoke to you and what was said?

A. They asked me why I—

Q. Who spoke?

A. Mr. Holmes asked me why I had not paid my Michiana dues. I told him why, we figured we had

1031 a grievance about the reduction in wages and we had spoke of it several months before that and it

was supposed to have been carried up and nothing had ever been done about it, so we thought the union hadn't done us any good, what was the use carrying the card?

Q. What was the further conversation, if any?

A. I think we talked for almost an hour, I remember.

Q. Mr. Lillard present at all times?

A. Mr. Lillard, Mr. Holmes and myself.

Q. Do you recall anything else that was discussed during this hour?

A. No. Mr. Holmes made the statement that he could see, there wasn't any reason why the company if the A. F. of L. or any outside organization should come in here, why they could not contract their tree trimming and also their line work.

Q. Is that all you remember about the conversation?

A. That is all.

Q. Who was the solicitor on your job?

A. Russell Kidder.

Q. Is ther another solicitor?

A. Yes, the other one is Kenneth Peach.

Q. Did you ever have any difficulty with Kenneth Peach?

A. We had an argument. I don't think we ever had any difficulty that I ever recall.

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CROSS EXAMINATION

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1034 Q. I want to ask you this difference in your pay check. Up to sometime in October you were working on the basis of 45 hours for a week's work, weren't you, and at that time you were put on the basis of a 40 hour week; is that correct?

1035 A. Right about that time sometime.

Q. Yes. And the 22 cents which we have been talking about arises out of this fact; that at the same time your hourly rate was increased 5 cents, and when you multiply 45 by 62 cents, your former rate, you get $27.90; isn't that correct; and then when you got 5 cents more, or 67 cents, you were put on a 40 hour per week

basis; your weekly check then was $26.80; that is correct?

A. I don't know. I haven't figured it.

Q. Well, now, you were put on a basis such as other employees were put on at that time, of working 40 hours per week, weren't you?

A. 48 hours?

Q. 40 hours.

A. 40 hours.

Q. That is correct?

A. That is right.

Q. So that if there hadn't been any increase of wages or the hourly rate, your loss would have been $2.00 more, wouldn't it?

A. I don't just follow you there.

Q. Well, that is five times 40, is $2.00, isn't it?

A. Yes, that is right.

Q. And you folks objected to being put on a 40
1036 hour per week?

A. I objected to the reduction in the weekly wage.

Q. After all, the real objection was the fact that your pay check was less?

A. That is right.

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RE-CROSS EXAMINATION

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Q. (By Trial Examiner Dudley): You said, I
1058 believe, that Jack Bentley asked you to join the Association. I don't remember who Jack Bentley is. Will you tell me?

A. I am not very well acquainted with Jack
1059 Bentley myself. I do know that he—I believe he is a lineman in South Bend.

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EARL SEELEY,

1060 a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

Testimony of Earl Seeley

DIRECT EXAMINATION

Q. (By Mr. Reynolds): State your name and address, please.

A. Earl Seeley, 206 North Niles Avenue, South Bend, Indiana.

Q. Are you employed by the Indiana & Michigan Electric Company?

A. I am.

Q. How long have you worked for the company?

A. Two years. A little over two years.

Q. What is your occupation?

A. I am a tree trimmer.

1061 Q. Who is your foreman?

A. Why, I answer to Russell McKinder. He is a solicitor, I guess.

Mr. Seebirt: Answer to who? Russell?

The Witness: Kidder.

Q. (By Mr. Reynolds): And who is Mr. Kidder's superior?

A. Mr. Lillard.

Q. Are you a member of the I. B. of E. W.?

A. Yes.

Q. When did you join?

A. I joined September 6th, 1938.

Q. Were you ever solicited for membership in the Michiana Association?

A. I was.

Q. By whom?

A. Jack Bentley.

Q. About when did Mr. Bentley approach you?

A. I don't know the date.

Q. Do you recall that the Michiana had a general meeting of employees?

A. Yes.

Q. Do you recall how long before that it was that Mr. Bentley talked with you?

A. Oh, I would say a week, maybe.

Q. Now, what did Mr. Bentley say to you?

1062 A. Well, he said they were forming their own

association; they wanted to have their own union.

Q. Did he say who "they" meant?

A. No, he didn't.

Q. Well, did you sign anything for him?

A. Yes, I did.

Q. What was it you signed?

A. It was a card or a paper. I don't know which.

Q. Did you pay any initiation fees or dues?

A. I did.

Q. At that time?

A. No, not at that time.

Q. To whom did you pay any money later?

A. I paid the money to Mr. Ernst, initiation fee and dues, and Mr. Lillard.

Q. How long did you pay dues?

A. I paid dues until May of this year.

Q. May of 1938?

A. May, 1938.

Q. Now, do you recall whether Mr. Ernst collected during that entire period that you paid dues?

A. No, Mr. Ernst didn't.

Q. Well, who collected after Mr. Ernst stopped?

A. Mr. Lillard was the one I paid.

Q. How many times would you say that you
1063 paid Mr. Lillard?

A. I paid him twice.

Q. Do you recall how much on each occasion?

A. The last time I paid him I paid him four months dues, $1.00, and I can't remember how much I paid him, the first time, before that.

Q. Did you voluntarily pay this money to Mr. Lillard?

A. Yes.

Q. Did he ever speak to you about being in arrears in dues?

A. No.

Q. Did you ever have any conversation with Mr. Lillard or with any other representative of the Association about dues payments?

A. Yes.

Q. When was that?

A. I don't remember the date, but it was Mr. Holmes and Mr. Lillard.

Q. And what do you remember about what was said?

A. Why, they asked me why I didn't pay up.

Q. Were you in arrears at that time?

A. I must have been.

Q. Who asked you that?

A. Mr. Lillard and Mr. Holmes.

Q. What did you say?

A. I don't remember what I did say.

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RUSSELL H. KIDDER,

1077 a witness called by and on behalf of the National Labor Relations Board, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q. (By Mr. Reynolds): State your name and address, please?

A. Russell H. Kidder, 2309 Mishawaka Avenue, South Bend, Indiana.

Q. Are you employed by the Indiana & Michigan Electric Company?

A. I am.

Q. How long have you worked for the company?

A. About four years and five months, I think.

Q. What is your occupation?

A. Tree trimmer. Class A.

Q. Do you have any other title or name that you are known by?

A. Well, I have been called several things, solicitor for one.

Q. And as solicitor, what are your duties?

A. You go around to the property owners where there is lines pass by and solicit their permission to trim trees.

Q. Are you a member of the International Brotherhood of Electrical Workers?

1078 A. I am.

Q. When did you join?

A. It was sometime preceding Christmas, 1937.

Q. Before that time had you ever been solicited for membership in the Michiana Association?

A. I had.

Q. What was the first occasion that anybody spoke to you about the Association?

A. Well, the first occasion was on a job one day that Mr. Bentley came out in a car and I don't know who it was that called us to the back end of the truck and I think he wanted a petition to organize a union then, and we signed a paper to that effect.

Q. What did he say about the project?

A. Well, he said that the C. I. O. was rather active and he wanted, some of the older men wanted to get an organization together to keep them out.

Q. And the men on the job signed his petition?

A. Yes.

Q. Do you know what Mr. Bentley's job is?

A. I think he is a lineman.

Q. Did he make any explanation as to why he happened to be there when you were working?

A. No, he didn't.

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Q. Now, about this meeting that was held in
1079 Three Oaks, who called that meeting?

A. Mr. Lillard told us they wanted to see the tree trimmers.

Q. Who did he say wanted to see the tree trimmers?

A. He didn't say.

1080 Q. Did you attend the meeting?

A. Yes, I did.

Q. Who was present ?

A. Well, there was I think, all the members of the crews, the two different crews of tree trimmers, apparently, Edgell and George Holmes.

Q. What took place at that meeting?

A. Why, they explained to us why we didn't get our expenses, or endeavored to explain to us why we didn't get our expenses paid when supposedly in the agreement

with the company union all of the employees were to get their expenses paid.

Q. What expenses?

A. I suppose moving expenses and so forth.

Q. You mean while you were away from home?

A. Away from home. South Bend, I presume, was their base.

Q. Were you in good standing with the Association at that time?

A. No, I was not.

Q. Were the other members of the crew in good standing then?

A. I believe some of them were and some of them were not. I couldn't say just who were and who were not.

Q. Were dues mentioned during the course of that meeting?

A. I don't believe so.

1081 Q. Have you had any discussions with Mr. Lillard about dues or about the union generally?

A. I have never had any discussion with him about dues that is not of late, anyway.

Q. Well, did you ever have any?

A. No. Well, he asked me one time when Mr. Holmes came out on the job why the boys, what was the matter with the boys they were not paying their dues.

Q. What did you say?

A. Well, I said I supposed they were disgusted with the fact that they lost money on the increase of hourly wage and the cutting of the day rate or the rates of the day.

Q. Was Mr. Holmes present?

A. Yes.

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CROSS EXAMINATION

1083

Q. (By Mr. Seebirt): In that meeting at Three Oaks they said if your expenses got too heavy they might have to let all this work by contract, is that true?

A. That is true.

1084 Q. And the expense they were talking about was the expense of moving an employee from one section of the country to another, is that true?

A. The expense they were talking about were the expenses evidently that we asked for. I don't know whether those—but—

Q. But it was the expense of moving an employee from one section of the country to another?

A. That is right.

Q. And Mr. Holmes and Mr. Lillard said that if they got too heavy, why necessarily the company could afford to let the work advantageously by contract?

A. That is correct.

Q. And save money for the company.

A. That is correct.

Q. You recognize that the company has the right to let it by contract if it wants to, don't you?

A. Certainly.

Q. Certainly. It would not be any violation of duty to you if they did it, would it?

A. I don't suppose so.

Q. You came to this company as an employee August 1, 1934?

A. That is correct.

Q. Starting at an hourly wage of 45 cents?

A. That is correct.

1085 Q. And since then you have been stepped up seven times until today you are receiving 75 cents an hour?

A. That is right.

Q. Are you acquainted with some line foremen on your job?

A. Well, not intimately, no.

Q. Well, they work frequently right along in the same country where you work, don't they?

A. Yes.

Q. You know generally their duties?

A. Oh, no, I can't say as I know their duties. I know they are managers of the crews.

Q. You observed their work. Is your position as

solicitor of your crew relatively amounts the same as a line foreman?

A. Well, the work is entirely different.

Q. Yes, it is the same, your work with your crew is similar to that of a line foreman?

A. Yes, I would say it is.

Q. Who was it that you had under you as a foreman or solicitor, whichever you choose to call it?

A. Well, I have had most all of them.

Q. Who of these men that we have had here before?

A. All three of them have been under me.

Q. All three of those witnesses who just preceded you?

A. Yes, sir, that is true.

Q. Are they members of your crew at the pres-
1066 ent time?

A. That is right.

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RE-DIRECT EXAMINATION

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Q. (By Trial Examiner Dudley): May I ask,
1109 at the time you had this conference with Mr. Holmes and—I have forgotten who—Mr. Edgell and Mr. Lillard, I believe, came out and spoke to you about the expenses; will you tell us what they said?

A. Well, they said that at the time we hired out it was understood that we were to receive no expenses and that the company felt that we understood that and we weren't to get any and that their expenses would be too great to make it possible for them to maintain a tree trimming department when they could contract it out cheaper.

Q. What expenses were you asking for, if any?

A. Well, expenses for meals and so forth, when we were away from what we supposed was our base, South Bend—claimed was our base. Headquarters, I mean.

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RE-CROSS EXAMINATION

1111 Q. (By Mr. Seebirt): As I understand it, the contention was that when you go to Coloma, for example, for six months, it was the company's attitude and position that that was your home; you weren't there just temporarily, that was your home, you changed your base?

A. I think that was the company's attitude, yes.

Q. Yes. Now, altogether you didn't agree with that. Did you take that grievance up with Mr. Dequine?

A. No, I didn't.

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FRANK CLAEYS,

1121 a witness called by and on behalf of the National Labor Relations Board, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

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Q. Are you a member of the International
1122 Brotherhood of Electrical Workers?

A. I am not.

Q. Ever signed an application?

A. I did.

Q. When did you sign an application for membership?

A. Oh, about the middle of April, I think. I am not sure.

Q. What year?

A. Well, it was just before the big meeting that the company had of the Michiana, that was on May 20th, that year. I don't know what year it was.

Q. Shortly before that meeting of May 20th?

A. Yes.

Q. While you were at that meeting or on your way to that meeting did you see any supervisory employee of the company?

A. You mean the meetings previous to May 20th?

Q. Yes.

A. I did.

Q. The Brotherhood meetings. Who did you see?
A. I seen Mr. Livelsberger and Mr. Carlton.
Q. Where were they located?
A. Well, we pulled our car right up in front of Mr. Livelsberger.
Q. Who was with you?
A. Mr. Casper, I think that is all.
Q. And what did you observe?
1123 A. Well, just as we got out of our car Casper says to me "There sets Earl."
Q. Did you look?
A. I looked.
Q. Was Mr. Carlton with Mr. Livelsberger?
A. He was not.
Q. Did you see Mr. Carlton, too?
A. I did see Mr. Carlton.
Q. At the same time or later?
A. No, later.
Q. Now, when did you see Mr. Carlton?
A. As we came around to the front of the building, the entrance.
Q. Where was he?
A. Parked right across the street.
Q. How did you know it was Mr. Carlton?
A. Well, they called by attention to him.
Q. Who did?
A. Mr. Casper.
Q. Well, describe what Mr. Carlton was doing?
A. He was sitting in the car.
Q. Was he looking at you?
A. I couldn't say. He was not when I looked at him. He had a newspaper or something.
Q. What was he doing with the newspaper?
1124 A. I didn't notice. I wanted to get out of there.
Q. Did you leave?
A. I did not.
Q. Where did you go?
A. I went inside.
Q. (Mr. Seebirt): You said you did not?
A. Repeat the question.

Mr. Seebirt: The question was did you leave?

The Witness: Did I leave what?

Mr. Seebirt: I am trying to get your answer. Please read the question.

(Question and answer read as follows:

Question: Did you leave?

Answer: I did not.)

Q. (By Mr. Reynolds): Where did you go?

A. Inside the building.

Q. Did you see either Mr. Carlton or Mr. Livelsberger again that evening?

A. I did.

Q. Where did you see them?

A. They were sitting in the car that Carlton was in, I don't know what kind of a car it was. I think it was a Ford.

Q. Where were you when you saw them?

A. I came downstairs.

1125 Q. After the meeting was over?

A. No, during the meeting.

Q. Why did you come down?

A. Because Mr. Livelsberger had went down and I went down to see where he went.

Q. Did you have any conversation with them?

A. I did not.

Q. What did you do after you got down?

A. I just looked in the car and I seen Hoblitzel inside the car with Mr. Livelsberger and Carlton and I turned around and went back upstairs.

Q. Did you see them any more that evening?

A. I don't think so.

Q. After this meeting in April, were you solicited for membership in the Michiana Association?

A. I was.

Q. Who solicited you?

A. Russell Harder.

Q. Where was that?

A. That was about a week before May 20th.

Q. Who was Russell Harder?

A. He is a foreman in the transmission department.

Q. Was he your foreman?
A. He was not.
Q. How did you happen to meet Mr. Harder?
1126 A. As I was coming the gate, that is in the gate on the platform, we have a lobby and then you go into a door and there is a waiting room, we all keep our lunch in there, and I met him right at the door and he says "I want to see you."
I says, "What do you want?"
He says, "I want to talk to you where nobody else can hear us."
I says, "Where do you want to go?"
He says, "Right over here in the corner will be all right."
So we walked over there in the corner. I don't think there was anybody near, I didn't pay much attention at that time, and he told me that the older men there were going to form an Association of some kind and that they had talked about me and they wanted me to go in with them.
Q. You were one of the older men, were you not?
A. That is what he told me.
Q. What did you say to him?
A. Well, I says, "Well, I have to consider it, Mr. Harder," I says, "You probably know that I attended an A. F. of L. meeting," I says, "and if you are going to tell me anything that you want kept a secret," I says, "don't tell me."
And he says, "No," he says, "we figure you are a pretty good fellow and we want you to come into
1127 our organization."
He says, "We know that the C. I. O. and the A. F. of L. is trying to organize the Indiana & Michigan" and he says "we don't want them in here and I want you to stick with us older fellows" and I says, "If you have got anything good I am plenty willing to go along with the older men," I says, "Let me know when you are going to have your meeting."
Q. What further was said, if anything?

A. Then he said, "I can tell you more about the A. F. of L. than anybody else probably can tell you" he says, "they won't tell you the truth or anything else, you come with us and we will take care of you."

And I told him that I didn't belong to any organization but if the older men is going to organize I was plenty willing to go with them and he said that he would let me know.

Q. Now did you come to learn about any meeting that was held?

A. I did.

Q. When and who told you?

A. I don't remember who told me, but on the morning of May 20th, that is the day of the meeting, they started to discuss it while we were eating dinner, they said there would be a big meeting that evening and it would be at St. Patrick's Hall in Niles Avenue, I think.

Q. Who is your foreman?

A. At that time my foreman was Clause Hilde-
1128 brande.

Q. Did you hear him say anything?

A. He came out to the truck just as the whistle blew and he says, "There will be a big meeting tonight in St. Patrick's hall and they want you all to attend."

Q. Did you attend that night?

A. I did.

Q. Did anyone go to the meeting with you?

A. Mr. Casper and Mr. Russell Bates.

Q. Did you have any conversation with them about the meeting that evening?

A. Yes, I did, that evening. I ride back and forth with Mr. Casper and we had worked an hour overtime and he had waited for me. The truck pulled into the garage and I got out of the truck and walked over and got in his car and Mr. Casper and Mr. Shields were sitting in the car talking and I got in the back and he says, "Let's go" and he says, "I got something for you" and he throwed a card in the back.

Q. A card?

A. A card, yes, a square card I would say—well, it was a membership card to the Michiana, and he says,

"Mr. Carlton informs us if we want to get into the meeting tonight we had better take that card and have it signed."

Q. Did you sign the card?

A. Not right there I didn't.

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Q. Did you attend any other meetings of the
1130 Michiana Association after that?

A. I did, the next meeting they had, I don't know the date, but it was at the American Legion Hall.

Q. What department are you in, Mr. Claeys?

A. I think I am in distribution. I work both.

Q. Was there a chairman elected for your department?

A. There was.

Q. Who was that?

1131 A. Jay Miller.

Q. Who is Jay Miller?

A. He is a line foreman.

Q. Did you have any conversation with Mr. Jay Miller about the Association?

A. I did after the first meeting.

Q. What was that?

A. Oh, I would say it was about three days after the meeting, maybe a week, I don't know.

One noon Jay Miller came up to me and he says, "I have got to have a collector, how about taking the job?"

I says, "I don't want to."

And he says, "I think I have asked everybody else around the town, how about helping me out?"

I says, "All right, Jay, I will take it, let me know what you want me to do," and he says, "I will see you later."

Q. Did you collect dues, then?

A. I did.

Q. And from whom did you collect dues?

A. Well, Mr. Miller and I had quite a talk and he said that I would have to wait until the receipt books came in, that he didn't have any, and he told me how many collectors he had and he says, "I will put you on the last," he says, "I will give each one of you a certain number of men to collect from."

I says, "I want you to understand, Mr. Miller,
1132 that I will collect these dues," and he also told me to be sure to get the dollar initiation fee "but" I says, "if I ask a man to pay his dues and he don't pay them, that is as far as I will go."

And he says, "That don't make any difference, just check each man as you ask him so you are sure you have asked every man on your list to pay his dues."

Q. And you collected from that time on?

A. I did, I collected the first two months and that was June and July and I also collected initiation fees from the men on my list.

Q. How many men were on your list?

A. Eighteen or nineteen.

Q. Who furnished you that list?

A. Mr. Miller.

Q. To whom did you turn over the money after you collected it?

A. To Mr. Knepp.

Q. Who is Mr. Knepp?

A. Well, I don't know his title, but I would say he is the timekeeper, I imagine, and that time he wes the treasurer of our group.

Q. Now, you say you collected for two months?

CHARLES A. HAVLIN,

1232 a witness called by and on behalf of the National Labor Relations Board, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q. (By Mr. Reynolds): State your name and address, please.

A. Charles A. Havlin, Granger, Route 1.

Q. Are you employed by the Indiana & Michigan Electric Company?

A. That is right.

Q. When did you start to work for the company?

A. In 1925, the 12th and the 2nd.

Q. The 2nd of December, is that right?

A. That is right.
Q. And what is your occupation?
A. Lineman.

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Q. And you have continuously been a lineman?
1293 A. That is right.
Q. Did you ever sign an application for membership in the International Brotherhood of Electrical Workers?
A. I did.
Q. When did you sign for the Brotherhood, as near as you remember?
A. On the 14th day of October, last year, 1937.
Q. 1937. Now, prior to the time you signed an application for membership in the Brotherhood, did you ever become a member or were you ever solicited for membership in any other labor organization?
A. Yes, I have been.
Q. When was the first occasion that that happened?
A. I could not give you the exact dates. I was called to work on Sunday, had a case of trouble and Mr. Daniels asked me if I would not like to sign up.
Q. Who is Mr. Daniels?
A. Why, he was a foreman.
Q. Was he your foreman?
A. Not at that particular time. He was the foreman on the rig at that date.

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Q. What did you tell Mr. Daniels?
1294 A. I told him at that time that I was not interested in any union at all, that I would not sign any cards of any kind.
Q. Did he give you the name of this proposed organization?
A. No, he didn't, not at that time.
Q. Did any one else speak to you thereafter about the proposition?
A. Yes, there was.
Q. Now, when and how much later, if you remember?

A. I can't give you the exact date. It was possibly, I would say possibly three weeks later.

Q. Three weeks later?

A. Yes.

Q. Now, in the meantime had there been any other organizing activity going on with reference to this union affair?

A. None that I knowed of.

Q. Now, what happened three weeks later, after you talked to Mr. Daniels?

A. Why, Glen Carlton wanted to know if I was going to get in with the rest of the boys. He said they were pretty well all signed up, and wanted to know if I didn't want to go along with them.

Q. I hand you Board's Exhibit No. 4 and ask you if you recognize what that is?

(Handing document to witness.)

1295 A. Yes, I do.

Q. I believe you have an affidavit on the reverse side of that paper with regard to it?

A. That is correct.

Q. The first time you talked with Mr. Carlton, was that paper shown to you?

A. That is what he gave me.

Q. What did he say about this paper, Board's Exhibit 4?

A. Well, he said this is one of the—a duplicate of what they were putting out and the way we thought about it, and he wanted me to see Lester Shields and Al Otis, he said they were two pretty hard nuts to crack and for me to work on them for him.

Q. Who were Shields and Otis?

A. They were linemen.

Q. Did they work on the same crew that you did?

A. Yes, they did.

Q. What did you do? Was that all that Mr. Carlton said to you?

A. At that time it was.

Q. What did you do after he talked to you and gave you this paper?

A. Well, I called on Mr. Shields at the house and showed him and he just didn't fully decide that he wanted to do anything at that particular time. He said
1296 that he would talk to me later about it.

Before you went to Mr. Shields had Mr. Carlton asked you to sign anything?

A. Yes, he did.

Q. What did he ask you to sign?

A. Well, it was a little application blank for the Michiana Association.

Q. Did you sign it?

A. Yes, I did.

Q. Did he give you any other copies of that card?

A. Yes, he did. He gave me three or four possibly.

Q. Now, have you finished telling what conversation you had with Mr. Shields?

A. Well, that was practically all. I didn't work those two particular boys very hard, although I felt like from the news that had gone around that I was about the biggest horse they had in the Michiana.

Q. You were the biggest what?

A. Horse, I mean I was in there pulling just as hard as any of them was.

Q. How did you learn about the Michiana?

A. Through Daniels, Mr. Daniels, the Sunday that I was called out.

Q. Did you talk with anyone else about it besides Mr. Daniels and Mr. Carlton?

1297 A. I did not.

Q. Now, you spoke about Mr. Otis. What did you do about him?

A. Well, I—Mr. Otis happened to be out to my place one evening, I believe he wanted to borrow a chicken coop, he came over and asked me whether he could borrow a chicken coop, so I just solicited him here. Then he didn't give me much satisfaction, so the next night I went to his house from work and he signed this little application blank and I turned it back in to Farmer, but it was by pencil.

Q. By "Farmer" who do you mean?

A. That is Glen Carlton, and the next day or so, I will say possibly two or three days later Mr. Carlton gave it

back to me and his fountain pen at noon and asked me if I would not go out and get Al Otis to sign it in ink for him.

Q. So what did you do?

A. I did. I went out to where the men all went to eat and called him off to one side and asked him if he would not sign another one in ink, that they wanted it signed in ink, and he didn't just like the idea of having to sign two at that particular time, and I talked to him a few minutes and he said that he would sign it later and bring it in to me in ink. It went on for two or three days, so I called back to his house to take up this application and they said they laid it on a—above there and a boy got it and tore it up.

1298 Q. So you didn't get his signature?

A. I didn't get it, no.

Q. Did you report back to Mr. Carlton about your failure?

A. Yes.

Q. What did you tell him?

A. I told him that I had called on Al Otis again last night to get the application and he said that he had signed, but the boy had tore it up by accident more or less.

Q. What did Mr. Carlton tell you?

A. Well, I just don't remember at that time just what he said.

Q. Did you have any further conversation with Mr. Carlton about the Michiana Association at any later time?

A. No, I didn't, other than at this time I had a light truck, I had two men part of the time working under me, and I went in at four o'clock and he handed me a slip with Jim Marsh's name on it and it was the night before one of the Michiana meetings.

Q. Do you recall which meeting it was, as to whether it was the first or second or third?

A. Well, I don't. It was not the first meeting.

Q. Did you attend the first meeting?

A. I did.

Q. You don't recall the date?

. . . . . .

Q. And when were you solicited by Mr. Bentley
1304 for dues?

A. I can't give you the date. I was away delinquent, I know.

Q. Several months delinquent?

A. Yes.

Q. Where did Mr. Bentley approach you?

A. On the platform.

Q. On the loading dock?

1305 A. Yes, the loading dock.

Q. Were you working at the time?

A. I believe it was noon hour.

Q. What did Mr. Bentley say?

A. Wanted to know if I wanted to pay up what I was delinquent in the Michiana. I told him I didn't believe I did.

Q. Now, is he the only one that ever solicited you for dues besides the other two men you mentioned?

A. Yes, sir, I believe he is.

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CROSS EXAMINATION

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Q. How many accidents have you had in the
1322 employment of this company?

A. One prior to this that I remember.

Q. Haven't you had eleven, eleven that you reported to the company?

A. Not that I remember.

Q. Under the Workmen's Compensation Law you understand that all accidents have to be reported, is that right?

A. That is right.

Q. And consequently you make a report when you have an accident, don't you?

A. That is right?

Q. And don't you recall that you have had eleven accidents while you were in the employment of this company?

A. No, I don't remember.

Q. You don't know that. Right now you are suffering from very extreme and painful burns on your leg, your right leg and your right arm, which grew out of your employment, isn't that true? That is true, isn't it?

A. I just don't get your question.

VIRGIL McCLURE,

1344 a witness called by and on behalf of the Respondent, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q. (By Mr. Seebirt): State your full name.

A. Virgil McClure.

Q. Where do you live?

A. Benton Harbor, Michigan.

Q. Are you an employee of the Indiana & Michigan Electric Company?

1345 A. I am.

Q. How long have you been such?

A. About eighteen years.

Q. Are you a foreman at the present time?

A. Yes, sir.

Q. When did you become one?

A. About April in '35.

Q. April, 1935, and where are you stationed in your work?

A. Well, Benton Harbor is our headquarters. We have several stations around there.

Q. What is the nature of the crew that you have? It consists of how many men ordinarily?

A. Well, there is three, that is, there are three electricians that are required to take care of our work.

Q. In the last half of the year 1937 of whom was your crew constituted?

A. The last half of 1937, well, it was myself and Beasley and Mr. Bloom and a laborer, Elkins.

Q. Elkins, yes. What is the work of your crew?

A. The general crew, that is without any laborer, con-

sists of repairing and maintaining sub-stations and equipment, and keeping the sub-station in order and operating.

Q. Is your work confined to sub-station work?

A. Well, sub-station work and I have a little work like timekeeping and such as that, to take care of, and
1346 reports.

Q. Is your crew given a particular district for taking care of sub-stations?

A. Yes, we have.

Q. What is your district?

A. Well, it is called the Benton Harbor District. That includes about all of the sub-stations in Michigan.

Q. Yes, and how many sub-stations were under your jurisdiction and care in the last half of the year 1937?

A. Fourteen.

Q. Mr. Elkins here testified that there were twenty-six. Do you have any such number as that?

A. No, we never did.

Q. Are you sure that it is fourteen?

A. Yes, sir.

Q. You know that very well, do you?

A. Yes.

Q. You visit them very often?

A. I do.

Q. About how often?

A. Well, it very seldom goes over two weeks but what I visit all of them myself. The whole crew does not.

Q. Do you belong to any labor organization, Michiana or I. B. E. W.?

A. No, sir.

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CROSS EXAMINATION

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1366 A. I have no idea what he did send.

Q. Now, you stated that you belonged to no
1367 labor organization, is that right?

A. That is right.

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Q. Do you know what rumors or notices or informa-

1371 tion there was with your gang about that meeting of May 20th?

A. Well, I don't know about that particular meeting, but I know when they signed their cards that they spoke about it.

Q. What do you know about that, Mr. McClure?

A. Well, the cards—the way I recall it, the cards were left there for us during the noon hour, or at least when we got back from dinner they were there.

Q. May I interrupt? Do you know who left them?

A. No, I don't.

Q. About when was this?

A. I couldn't say when it was.

Q. Before May 20th?

A. Well, I don't know that, because I didn't pay enough attention to it to know—to really remember when it was.

Q. I interrupted you. Go ahead.

A. The cards were left there for us, and as far as I know they did sign. I signed one myself, but then I never went through with it.

Q. What kind of a card did you sign, Mr. McCulre?

A. I think that was the card that wanted to know if we was in favor of an Association.

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H. D. SILL,

1384 a witness called by and on behalf of the Respondent, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q. (By Mr. Seebirt): State your full name.

A. H. D. Sill.

Q. Where do you live?

A. 2521 Miami Street.

Q. Are you connected with the Indiana & Michigan Electric Company?

A. I am.

1385 Q. What is your position with them?

A. Electrical superintendent of the sub-stations.

Q. And how long have you occupied that position?

A. Well, I have been with the company about eleven years in South Bend.

Q. Is Mr. McClure under you?

A. He is.

Q. Do you belong to any labor organization?

A. No, sir.

Q. Now, I want to ask you about the early part
1398 of the year 1937, whether or not you had conferences with Mr. English and Mr. Calvert, with the superintendents and heads of departments in your company?

A. We did.

Q. Where were they held?

A. In the main office.

Q. At South Bend, Indiana?

A. That is right.

Mr. Seebirt: Please mark that.

(Thereupon, the document above referred to was marked "Respondent's Exhibit No. 11," for identification.)

Q. (By Mr. Seebirt): Showing you a document which is marked Respondent's Exhibit No. 11, I ask you to look at it and then I ask you whether or not that was distributed, that and copies were distributed among members of these heads of departments and superintendents?

A. It was.

Q. And did you receive such a one?

A. I did.

Q. I notice that this is dated April 26th, 1937. Will you state with reference to that date about the time that it was distributed among the heads of departments?

A. Well, it was along the early part of May. I don't recall the exact date.

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Q. (By Mr. Seebirt): Now, in these conferences,
1400 generally speaking, what was said by Mr. English or Mr. Calvert about your activity and the activity

of the superintendents and heads of departments?

A. Well, he wanted us to read that Act and become familiar with it and pointed out to us what the employees had the right to do.

Q. And what did he say the employees had the right to do?

A. He said they had a right to become affiliated with any union, regardless of affiliation, and they had a right to—and he didn't want us to interfere in any way with them, with their rights in that connection.

Q. Was that the point that he impressed upon you?

A. Yes.

Q. Are you now talking of Mr. English or Mr. Calvert?

A. Well, as I recall the meeting we had, we have had various meetings and Mr. English and Mr. Calvert have both spoken. I don't recall the exact incidents.

Q. Did you have anything at all to do with the organization of this independent union called the Michiana?

A. I did not.

Q. Did you aid or encourage it in any way?

A. I did not.

Q. Did you make any financial contribution to its organization?

A. I did not.

1401 Q. Or to its treasury or membership?

A. I did not.

Q. Did you meet your employees or the men under you and talk to them about it?

A. I talked to them individually. I don't have enough to form a very big group.

Q. How much of a group do you have?

A. Well, my total employees under my jurisdiction are about 45 to 50.

Q. And any of those 45 or 50, did you have a conversation with them urging that they become members?

A. I did not.

Q. Did you ever say to any of that 45 employees or any other of the employees of this company that they should become members of the I. B. E. W. or the C. I. O. or any other labor organization?

A. I did not.

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CROSS EXAMINATION

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Q. Now, will you state just what Mr. English's
1402 or Mr. Calvert's words were at the meeting of the other department heads about your duty not to interfere with labor organizations? Do you remember what they said to you?

A. I can't recall his exact conversation.

Q. Do you remember any instructions they gave, any specific instructions about any affirmative action you were supposed to take in that regard?

A. Well, they brought out very strongly that we were not to interfere with the employees' rights as pointed out in the National Labor Board Act.

Q. Did he instruct you to notify your foremen to that effect?

Mr. Seebirt: I am objecting to that, we were not obliged to do that, that would have been an interference and in violation of the law.

Trial Examiner Dudley: I will let him answer.

A. I don't think he did; as far as I am con-
1403 cerned, I talked to my foremen.

Q. (By Mr. Reynolds): You talked to all your foremen, did you?

A. Yes.

Q. Now, when did you do that?

A. I don't recall the exact date when it was.

Q. What did you tell your foremen?

A. I told them that the employees had the right to affiliate with any union and I didn't want them to interfere with the men in any of their rights as are laid out in the Labor Act.

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RE-DIRECT EXAMINATION

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Q. If you had strikes and a shutdown of the
1413 company's operations, that would affect your whole business, wouldn't it?

A. I believe it would.

Q. Affect the whole community?

A. Yes, it would.

Q. And you would not want the plant shut down, of course, would you?

A. No, sir.

Q. You wouldn't want service to stop to the rest of the community?

A. No, sir.

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Q. (By Mr. Reynolds): When Mr. McClure
1429 needs a new man, does he search out the man himself and then clear through you before the man is hired? How does that operate?

A. Well, when Mr. Elkins was hired—

Mr. Seebirt: No, no. Listen to the question.

The Witness: All right.

Mr. Reynolds: Read the question, please.

(Question read.)

The Witness: That's the way it is.

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MILTON C. ZUMPE,

1437 a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q. (By Mr. Thornburg): You may state your name.

A. Milton C. Zumpe.

Q. And your residence, please?

A. 1218 Oakland Street, South Bend, Indiana.

Q. What is your occupation?

A. Valuation engineer.

Q. Valuation engineer. With what concern?

A. Indiana & Michigan Electric Company.

Q. How long have you been with the Indiana & Michigan Electric Company?

A. A little over 15 years.

Q. Will you describe very briefly for the Examiner the nature and the character of your work, please?

A. Make inventories, values of properties, values of materials being removed from service for retirements and capital account.

Q. After the nature of accounting work, then, 1438 I take it, in a sense?

A. Semi—semi-accounting and engineering.

Q. Are you a member of or affiliated with any labor organization?

A. None whatsoever.

Q. I will ask you whether or not you know one Albert O. Snyder?

A. I first met him in 1926.

Q. In 1926. At that time Mr. Snyder was identified with the Indiana & Michigan Electric Company?

A. Yes.

. . . . . .

Q. Did Mr. Snyder advise you upon the evening 1442 or the occasion of your visits to that family—did he advise you why he was going to California or Texas?

A. The fact that his wife was ill and that the doctor had told them that they should leave that part of the country,—

Q. I see.

A. And as soon as possible.

Q. Did he state any other reason for his removal from this part of the country?

A. No, none whatsoever.

Q. I will ask you whether or not he mentioned his position with the Indiana & Michigan Electric Company at that time?

A. Yes, in this way; we were talking and I was more or less offering some sympathy to him, and he mentioned that he had worked himself up to a foremanship,

a line foremanship, and that he was really sorry to have to sacrifice that and go out and start as a lineman again somewhere else. He said he wasn't afraid to start as a lineman again, because he knew that he was a good lineman and would be able to get a job.

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CROSS EXAMINATION

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Q. Are you a salaried man, Mr. Zumpe?

1444 A. Yes, I am.

Q. Under whom do you work?

A. Under Mr. English.

Q. Is he your next superior?

A. Yes.

Q. You have no other superior besides Mr. English?

A. No.

Q. Do you have supervision over the work of any other employees?

A. Yes.

Q. How many?

A. At the present time 35.

Q. 35 men?

A. Yes, just within the last four months.

Q. And before the last four months did you have supervision over a smaller number?

A. Oh, semi-supervision over two clerks under me.

Q. Did your salary advance four months ago?

A. It advanced before that time.

Q. Now, if the membership records of the Michiana Association show you as a member—show that you joined on June 7th, 1937, would you say that's incorrect?

A. It is.

1445 Q. Did you ever sign any kind of a card?

A. Yes, I signed one of those cards.

Q. Well, didn't you understand what you were signing?

A. Certainly.

Q. Well, what were you signing?

A. I will tell you the reason I signed it; out of curiosity, to see what was going on.

Q. Well, you knew, did you not, what it was, that you were signing?

A. Certainly.

Q. What was it?

A. A card which stated, oh, something about were you in favor of a local association within the—made up of the employees of the Indiana & Michigan Electric Company.

Q. Now, wasn't that an application card for membership in the Michiana Association?

A. It might have been.

Q. Well, don't you know that that's what it was?

A. No, I don't, not particularly now. I haven't seen one of the cards since I signed it.

Q. Now, you say you signed one in order to gratify your curiosity?

A. Right.

Q. What did you find out after you signed the card?

A. I stuck my head in the door and the place
1446 was full and turned around and walked out.

Q. You mean the meeting place?

A. Yes.

Mr. Thornburg: What meeting was this, Mr. Reynolds?

Q. (By Mr. Reynolds): Do you know what meeting that was?

A. It was in the St. Joe School, I believe, whatever that was.

Q. And do you remember that that was on or about June 11th, 1937?

A. Yes, around there, somewheres, yes, I would say.

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TAYLOR EDGELL,

1451 a witness called by and on behalf of the Respondent, being previously duly sworn, was examined and testified further as follows:

DIRECT EXAMINATION

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Q. Yes. And did you have a talk with Mr.
1457 Robinson about his leaving?

A. I did.

Q. And why did he say he was leaving?

A. Well, practically the same reason. He had a daughter that had been ill for quite some time.

Q. Was she living with him?

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Q. And what did he tell you about the daughter?

1458 A. That she had been sick, and if I recall right it was supposed to be the rickets, or something to that effect, that she was afflicted with.

Q. Did they tell you when they were going to leave Benton Harbor?

A. At what particular time, do you mean?

Q. Well, they told you of the incident, did they?

A. Yes.

Q. Did they tell you how they were going to leave?

A. Yes, they were going to drive.

Q. Going to drive by automobile?

A. That is right.

Q. And did they?

A. They did, as far as I know, yes.

Q. And have you ever heard of them since?

A. I have heard of them, but not from them.

Q. You haven't heard from them?

A. No.

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Cross Examination

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Q. You didn't know that Mr. Snyder and Mr.

1461 Robinson were members of the Brotherhood?

A. I didn't know it, no, sir.

Q. Did you hear it?

A. I had heard it, yes.

Q. From whom did you hear it?

A. I can't recall now. Just everybody was talking about union activities, so I couldn't state definitely who.

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GEORGE W. SCHMIDT,

1519 a witness called by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q. (By Mr. Seebirt): Will you state your full name?

A. George W. Schmidt.

Q. You live in St. Joseph County, Indiana?

A. I do.

Q. Do you live near the Hen Island and Twin Branch plants of this Indiana & Michigan Electric Company?

A. Quite near to the plant, yes.

Q. And what is your position with the company?

A. Well, my title is superintendent of power.

* * * * * * * * * *

1551 Q. Out there you have approximately how many under you?

1552 A. At the Twin Branch plant?

Q. Yes.

A. Oh, approximately 135.

Q. 135?

A. Yes, may vary a few either way.

Q. Mr. Schmidt, in your contacts with these men out there or any other employees of the company, have you ever asked them to organize or refrain from organizing any union or unions?

A. No.

Q. Have you ever interfered in the least in any such matter?

A. No.

Q. Tell the Board whether or not you have ever requested any of these men or any of your foremen to go out and organize unions?

A. No, I have not.

Q. Of any kind whatsoever?

A. No.

Q. To your knowledge has anybody out there been discriminated against because of their union activities?

A. No.

Q. Have you advanced help or favored men or employees because of their belonging to any particular union?

A. No.

Q. Have you discriminated against anybody because they belonged to some other union?

1553 A. No.

Q. In your judgment has that been done by any member of the organization in your Twin Branch plant?

A. No.

Q. Or any other part of the property?

A. No.

Q. Along in the latter part of April or early part of May, 1937, do you remember of having a departmental meeting at the office of Mr. English?

A. When was that?

Q. The latter part of April or the early part of May, 1937?

A. Yes.

Q. And were department heads present on that occasion?

A. Yes.

Q. And who met with you other than the superintendents and department heads?

A. Mr. English and Mr. Calvert.

Q. And was there some discussion there, Mr. Schmidt, about the Wagner Act?

A. Yes.

Q. Can you recall what it was?

A. Word for word, no.

Q. Well, give the substance as nearly as you can; you don't have to give it word for word.

A. Well, at that time it was quite the topic of
1554 everyone's conversation that had to do with employment of labor and—

Q. What did Mr. English or Mr. Calvert say to you when you were congregated there?

A. Well, they talked of it in a general way and Mr. Calvert had some—I might say excerpts from it, and the department heads were—well, different parts of the

Act were read according to Mr. Calvert's excerpts there and we were instructed to read them also.

Q. I show you Respondent's Exhibit No. 11 and ask you whether or not a copy of that was placed in your hands about that time?

A. Well, just looking over it in a general way I would say yes. It looks very much like what we were given.

Q. George, this exhibit here says that the law prohibits specified practices, the violation of which justifies a complaint, and if complaint is made that the N. L. R. B. may be invoked to terminate the practice.

This heading specified here is "Unfair Labor Practices." Did Mr. Calvert and Mr. English tell you why they wanted you to go over them?

A. Yes.

Q. What you were to do?

A. Yes.

Q. What did they say to you?

A. They in a very specific manner instructed
1555 us to adhere strictly to the law, not to violate it in any manner whatsoever.

Q. And did Mr. Calvert develop that further as to what the employees of this plant should be permitted to do without interference from you or the management?

A. Yes.

Q. What did he say?

A. Well, he instructed us to further instruct our department heads by our own word of mouth to do the same as we were instructed to do, not to allow any discrimination to take place in our organization among the employees.

Q. After the organization of the Michiana, did you subsequently meet with Mr. English and Mr. Calvert and the various heads of the departments to discuss the question of grievances?

A. Yes.

Q. Do you know how it happened that the superintendents and men like yourself were in that conference?

A. Well, I would say because Mr. English or the man-

agement and Mr. English and Mr. Calvert hold these department heads responsible for the organization.

Q. Did you see any letter which the executive committee of the Michiana had written to him on that occasion?

A. I did not see that.

Q. You didn't know that they requested that
1556 the heads be brought in?

A. No, I didn't know that.

Q. In that conference did you discuss the subject of grievances?

A. Yes.

Q. What was said at that conference?

A. What were some of the grievances?

Q. Yes, what was said?

Trial Examiner Dudley: Who all was present at this conference?

Q. (By Mr. Seebirt): Well, let's find out. Who was present, first let us find out who was present?

A. Well, Mr. Holmes was there; do you mean of the Michiana Association?

Q. Yes, first give them.

* * * * * * * * * * *

Q. (By Mr. Seebirt): What heads of depart-
1557 ments were present?

A. Dequine and Sill and Girard and myself.

* * * * * * * * * * *

Q. Did you or any head of the department or of the company so far as you know ever contribute anything
5 financially to the Michiana?

A. No.

Q. Did you ever pay any of their bills?

A. No.

Q. Did you ever permit them to use the company's property for the purpose of holding meetings?

1558 A. No.

Q. Or did any of them at any time so far as you know solicit members or do the work of the union on company time out in your plant?

A. Not to my knowledge.

Q. Did you have any complaints of that character?

A. None whatever.

Q. Did you at any time advise, urge, threaten or coerce any employees of this company to join the Michiana and pay dues to it?

A. No.

Q. Have you at any time in any way whatsoever favored members of the Michiana by granting them privileges which other employees did not have?

A. No.

Q. Have you in any way dominated or interfered with the administration of the Michiana Association?

A. I have not.

Q. Have you ever directed that these other unions such as the C. I. O. or the American Federation of Labor, should not have a free hand in organizing out in your plant?

A. I did nothing to interfere with them.

Q. Did you ever talk to anybody on the subject at all discouraging them from joining these other unions?

A. No.

1559 Q. Did you ever call in any of the employees of this company and question them as to their union affiliations?

A. I did not.

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CROSS EXAMINATION

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Q. Well, now, who did you understand was meant by those instructions that you were to pass along?

A. Those that are immediately in my charge and in charge of the workmen further down the line.

Q. In other words, do you mean foremen?

A. No.

Q. Well, now, who do you mean?

A. I mean superintendents.

Q. Well, who did you consider was included in that instruction? Will you name them?

A. Mr. Fay, Mr. Lutes. That is all.

Q. Those two men were the ones that you passed that information to, did you?

1560 A. Yes.

Q. You instructed these two men to the same effect that you had been instructed in the office?

A. Yes.

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Q. (By Mr. Reynolds): Did it come to your

1565 knowledge, Mr. Schmidt, that some of the foremen under your supervision did take an active part in the affairs of the Michiana Association?

A. It did not.

Q. It did not?

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Mr. Reynolds: If the Examiner please, at this

1577 time I want to make a motion to amend the Board's Complaint in one particular, referring to Paragraph 5 of the Board's Complaint. After the word "Association" in the seventh line of Paragraph 5, I move to add this clause "On or about February 5, 1938, Respondent entered into an illegal sole collective bargaining agreement with Michiana Electrical Utility Workers Association for a term ending March 22, 1939."

Mr. Seebirt: The Respondent objects to the granting of the motion to amend for the reason that such a charge was not contained in the original complaint that was filed here. No thought or notice has heretofore been brought to the Respondent that the Board intended to rely upon any such charge; that it is rather unfair

1578 at this time to amend the complaint in the manner suggested for the reason that it presents here a wholly different charge than any one that has been made by the complaint, and no time or preparation upon the amendment has been given to the Respondent.

It would be rather unfair, we think, to grant the amendment at this time.

Trial Examiner Dudley: May I ask you—

Mr. Seebirt: I would think that our decision of two

days ago in the Consolidated Edison Case is directly upon this proposition, and I will just say to your Honor that while I telegraphed for an opinion, I have not gotten it and I am wholly unprepared in the matter. I didn't think that there was any such question in this case.

Trial Examiner Dudley: I have read the news releases on that decision.

Mr. Seebirt: Yes.

Trial Examiner Dudley: Of course, I haven't seen it yet.

Mr. Seebirt: And the news releases are rather suggestive, I think, that it is in point on the question that Mr. Reynolds raises here.

Trial Examiner Dudley: Perhaps that is why he is making this to comply with the decision.

Mr. Reynolds: No, I haven't got it, Mr. Seebirt.

Mr. Seebirt: I sent for the decision. I have not
1579 got it, but I have telegraphed for it and have asked for it.

Trial Examiner Dudley: Mr. Reynolds, would you read that again? Did you get it down? Do you want it? I didn't get exactly what you said?

Mr. Reynolds: "On or about February 5th, 1938, Respondent entered into an illegal sole collective bargaining agreement with the Michiana Electrical Utility Workers Association for a term ending March 22, 1939." Comma, and then the rest of the paragraph will be as it now appears.

Mr. Seebirt: Just add to the objection that, if the suggested amendment is made on the basis of something contained in the decision of the Supreme Court of the United States, which was made in the Consolidated Edison Case on Monday of this week, that it is unfair to Respondent to offer the amendment for the reason that Respondent has had no opportunity to examine the text of that decision and to know what is involved in the suggested amendment.

Trial Examiner Dudley: Well, do you intend to put in any additional evidence on this, Mr. Reynolds?

Mr. Reynolds: No, if the Examiner please. The contract is in evidence, has been offered in evidence, together with the supplemental agreement, which is a part of the contract, and I think that the evidence which has already been introduced would be the evidence which would bear upon the legality of the contract, and I see no reason for bringing out any further evidence
1580 concerning the contract. The contract is in evidence and I am sure the parties have notice of that.

Mr. Seebirt: If your Honor please, may I suggest this? I don't know whether my record is the way I want it, but this is the point that I am going to make; that I rather suspect today, and if not today, tomorrow, the text of that decision will arrive here in South Bend, and would there be any objection to withholding the decision until we have a chance to look at it?

Trial Examiner Dudley: It would seem to me from what I have gathered of the motion and from what I have read in the newspapers, this is probably an attempt to be sure they are complying with the decision in this Consolidated Edison Case. I assume there isn't any great surprise, inasmuch as we have gone into the whole matter, as a matter of fact, along with other matters involving the Association, so that I am inclined to grant it, but I am also willing to hold it up.

(Discussion off the record.)

Trial Examiner Dudley: I might say that if the Respondent wants additional time, either to answer to the amendment or to prepare and introduce evidence in answer to the amendment, I will, of course, grant such a request for additional time. That is, if there is any surprise we want to take care of it and see that you have ample time to prepare a defense on whatever new issue is brought up.

1581 Mr. Seebirt: All right. Then the complaint is ordered amended accordingly, is that it?

Trial Examiner Dudley: All right, I will grant the motion.

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JAMES MARSH,

1581 a witness called by and on behalf of the Respondent, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q. (By Mr. Seebirt): State your full name?
A. James Marsh.
Q. Where do you live?
A. 801 East Colfax, South Bend, Indiana.
Q. And by whom are you employed?
A. Indiana & Michigan Electric Company.
Q. When did your employment begin?
A. January 31st, I think it was 1922. This January 31st I will have been with the company sixteen years.
Q. How is your employment designated?
1582 A. I am Class A Operator at the Elkhart Hydro Plant.

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Q. Mr. Marsh, I believe that you attended a
1583 meeting which has been testified here about as having taken place in May, 1937, at the house of one Mr. Henderson; is that correct?
A. Correct, sir.
Q. And do you know how it was that you happened to attend that meeting?
A. Yes, sir.
1584 Q. Yes. Will you tell the Board?
A. There was a friend of mine told me that he would like for me to be present at that meeting, and we had had previous conversations. Would you like for me to relate that?
Q. Well, who was that friend?
A. "Farmer"—Glen Carleton.
Q. Mr. Glen Carleton?
A. Yes.

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Q. Was there anything said by him there as
1586 to what the purposes were, why you were forming such an Association?

A. Yes. He says, "A lot of the boys have grievances, and," he says, "They feel as though they want to take them up through channels, and," he says, "we can't pick up a paper but what almost every page is something about a union, and," he says, "the way I feel about it," and I agreed with him, "that we all, as employees, know what we want, what will affect us best, and that we would like to have something where we'd have the management of."

1591 Q. Or had been arranged? I am not sure in my own mind whether at that Henderson meeting that group there arranged for the larger meeting, or whether it had already been arranged. Can you clear that up for me?

A. The way that I remember it, I won't be positive, but the way that I remember it they decided that arrangements would be made for a group meeting to try to get all employees that was not on duty to attend that meeting.

Q. Therefore, your committee or the group that met at Henderson's concluded to hold a larger meeting on May 20th, did they?

A. Well, I don't know the date. It was a larger meeting later on.

Q. Do you remember the large meeting?

A. Yes.

Q. Did you conclude at the Henderson meeting to hold that meeting then?

A. Yes, for a larger meeting.

Q. And how many days after the Henderson meeting was that held, do you know? Was it the next day or several days? I want to get that space in there. I don't insist that you shall be accurate.

A. I don't believe that it was the next day. I couldn't say how soon after it was.

1592 Q. Well now, Mr. Marsh, there was something said there about getting an attorney to help you on conforming to state laws and national laws.

Did you or someone else make any suggestion about an attorney?

A. Someone brought up the name of—oh, what is his name? Jernegan, State representative at that time.

Q. State Senator?

A. Senator or Representative. He was in the State House.

Q. Yes.

A. And it was discussed, and they thought by him being connected in the legislative body of the State that he would be a good man to see.

Q. I see. And did you or someone there present go to see Mr. Ralph Jernegan?

A. That is right.

Q. When did you go to see him?

A. That evening.

Q. After this meeting you went over to see him, did you? After the meeting you went over to see him?

A. I believe that Mr. Collins and I—I don't know whether the meeting was adjourned or whether we left before the meeting was adjourned, but we went to see Mr. Jernegan.

Q. After you saw Mr. Jernegan did you report back to this group, or when you left, so far as you were concerned, was that the end of the meeting at the Henderson home?

1593 A. Well, we went back and told Frank that we had seen Jernegan and that he had agreed to act as our representative.

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Q. Tell the Board what the conversation was between your committee of two and Mr. Jernegan?

A. Well, when we went in we explained what we wanted to Mr. Jernegan, to help us in forming some sort of a union where the employees was gathered together, and he was very hesitant about answering, and Mr. Collins says, "Now, Mr. Jernegan," he says, "I can give you assurance that as far as I know, the company knows nothing of what we are doing."

Q. Well, had he expressed any reason or anything about his hesitation?

A. He asked us, he says, "Are the employees doing this themselves of your own free will and accord, or is it instigated by the company, or what?"

1594 Q. And what was Mr. Collins' reply to that?

A. That as far as he knew that the company knew nothing of it at all, and I verified the statement.

Q. Did he ultimately consent that he would do some work for you or help you?

A. Not immediately. He thought it over and we both had to reassure him that as far as we knew personally the company knew nothing of it.

Q. I mean, that evening, did he indicate one way or the other whether he would go along with you and help you?

A. Yes.

Q. Before you left?

A. Yes.

Q. And then you took the word back to Mr. Henderson?

A. Yes.

Q. Did Mr. Jernegan attend the meeting of May 20th?

A. Well, I won't say what date it was, but he attended the meeting that we had, the open meeting for all the employees, at the St. Joseph School.

Q. I think we agree that that was on May 20th, we all understand that. And did you go to this large open meeting that was held?

A. Yes, sir.

Q. Where was that held?

A. In the St. Joseph School, I believe it was

1595 what they call the auditorium of the school.

Q. Was the information that that meeting was going to be held just kept among a few folks, or was it broadcast among all the employees?

A. Well, I should judge that it was amongst all the employees, because as near as I can figure out, we tried to estimate and as near the estimation as we could get there was a number of hundreds.

Q. What do you mean?

A. From between six and eight hundred there, is

what we estimated. I don't know the capacity of the building or anything.

Q. Was it a closed meeting where everybody had to sign a card before he got in?

A. Not that I know of, for the simple reason, the way that I understood the meeting was for all employees to get their reaction to the organizing of the group.

Q. Did you hear anybody get up and make an announcement or talk at the door or any place about the room to the effect that before they could get in that they had to sign cards, for membership?

A. Positively not, for the simple reason that before the meeting was over I was one of the fellows that went around and passed out cards to the bunch and the cards were signed in the meeting and handed back to me,
1596 and I walked up to the platform and handed them up on the platform there, so that could not have been, because they was allowed in there and they had not signed cards previous.

Q. Tell us about the seating there; were there individual seats or long benches that the people sat in, do you recall?

A. Well, the way that I understand it, it was the individual seats.

Q. And they were lined up in rows weren't they?

A. Well, it was just like a regular auditorium.

Q. How did you hand cards to them?

A. By walking down the aisles and where a man had held up his hand or made indication that he wanted a card I passed the card to him.

Q. Did other folks than you also hand those people cards?

A. Well, I think that there was one for each aisle. There were three or four of us, and then I would do just like I say, would pass the card down, and someone in the middle seat and I would pass it and ask them to hand it down.

Q. Is it your recollection that one man did it all, or there was a man for each aisle, that is what I am trying to get at.

A. There was a man for each aisle, if I remember correctly.

Q. That is the way the cards were signed there at the meeting?

A. Yes, sir.

Q. Were they handed back later or not?

1597 A. Yes.

Q. Did the same men pass down the aisles and pick them up?

A. Yes.

Q. Will you please tell us in substance what the proceedings were at that meeting?

A. Well, that has been quite a while ago and I—

Q. Well, let's take it piecemeal. What about a chairman? Was anything done about a chairman?

A. Well, they sat up there and there was just a little bit of hesitancy about how to go ahead, and if I remember correctly Mr. Jernegan suggested that we appoint a temporary chairman so that we could get started and talk this thing over.

Q. And who was appointed? Do you have a recollection of who presided in a temporary way?

A. I don't—I don't believe that Mr. Holmes was there at that meeting that night. I wouldn't say for sure, but I believe that another gentleman acted as temporary chairman.

Q. Well, who was he, that is what I am asking for.

A. I don't know what his name is, but he was a tall, large—I can't think of his name.

Q. May I attempt to bring this to your mind here by asking you whether it was a Mr. Lambert or not. Do you know Mr. Lambert personally?

A. I believe that is his name.

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Q. What did Mr. Lambert do about the meet-

1598 ing? Did he throw it open to the public? Tell us what he did as near as you can tell?

A. As near as I can remember he got up and he told them why the meeting was called, it was to form an em-

ployees' group for contacting the management, settling disputes, in other words, I believe that he mentioned to form sort of a union. I think that the word union was brought in.

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A. Ray and I asked Mr. Jernegan if he—at the
1600 night that we called at his home, if he would draft some sort of letter so that the management would know what we were doing, as we didn't want to do anything underhanded.

Q. And did Jernegan bring that communication to the meeting?

A. He did.

Q. Is that the one that was signed by sixteen men, did you say?

A. I believe that is the one.

Q. And at that meeting was there any committee appointed to take that communication to the management?

A. I believe at that meeting there was.

Q. Did you go along?

A. I did.

Q. You were one of them?

1601 A. I was.

Q. Who did you see on that occasion?

A. I believe that Ray Collins, I believe, and myself and Mr. Holmes and some other gentleman, I don't know his name, was the ones that took it up to Mr. Tom English and Mr. Calvert.

Q. Did you have a talk with them?

A. We showed them the letter, yes.

Q. And what was the discussion there, the conversation?

A. We walked in and they asked us to be seated and Mr. Holmes, I believe it was handed the letter to Mr. English. He read it and he handed it to Mr. Calvert and he said, "Just what do you boys have in mind? It states there that you are going to form an organization to handle grievances and anything that might come up."

Q. What else was said?

A. And they asked farther as to what was the reason that was back of it and what did we have in mind, and I

answered the best that I could and I said in this way, I believe it was word for word that I said that I believed that all of us that met at Mr. Henderson's house had in mind of trying to follow the only commandment that Christ gave on earth, that was in common words, "Do unto others as you would that they should do unto you."

1602 I never had such a quick response to anything I said or remark ever I made as Mr. Calvert gave me. If I remember correctly, he raised to his feet and he hit the table and he says, "Boys, if you put that one thing in" he says, "you needn't worry about having any contract signed."

He says, "It will be signed immediately with that one thing in it."

Q. He thought that would be a pretty good labor guide, did he?

A. That was what I got from him.

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1604 Q. Mr. Marsh, did Mr. English, Mr. Calvert, or any superintendent of this company ever come to you and suggest your creating an interest in the
1605 formation of this Association called Michiana?

A. Absolutely not.

Q. Did you ever discuss that with them other than the meeting that you had with the management, which you have told about?

A. Never, except at the time that I was there and presented that letter to Mr. Calvert and Mr. English.

Q. Did any of them ever come to you privately and talk it over?

A. Absolutely not.

Q. So far as you know, did the company or any of its officials or superintendents make any financial contribution to its organization?

A. As far as I know, none. I had no contact with the financial side of it at all.

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CROSS EXAMINATION

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Q. I am asking you, assuming your explanation
1616 and asking you whether you consider that all the other employees were eligible?

A. I personally considered that anyone should be eligible who is not connected with the management, in other words, who has not the right to hire and fire. Now, I don't know with the company where that limit is myself personally, because I have never personally, to my
1617 sorrow, ever reached or attained that heighth.

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F. M. HENDERSON,

1640 a witness called by and on behalf of the Respondent, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q. (By Mr. Seebirt): Will you state your full name?

A. F. M. Henderson.

Q. Where do you live?

A. 1009 21st Street, South Bend.

Q. Are you an employee of the Indiana & Michi-
1641 gan Electric Company?

A. Yes, sir.

Q. How long have you been such?

A. About nine years.

Q. Yes. And what is your position with the company?

A. Transmission Engineer and Supervisor of Right of Way.

Q. Have you been such for sometime?

Trial Examiner Dudley: I didn't get that. Transmission Engineer and what?

The Witness: Supervisor of Right of Way.

Q. (By Mr. Seebirt): Supervisor of Right of Way. Have you been such for sometime?

A. Yes, sir.

Q. How long?

A. I have been Transmission Engineer since I started

to work for the company, and the Right of Way work has been carried on through the past three or four years.

Q. Now, Mr. Henderson, are you paid by the hour or are you on a monthly salary?

A. I am on a monthly salary.

Q. What is your salary?

A. $243.50.

Q. Now, as an engineer you may state to the Board whether or not you create your work or whether it is brought to you?

A. My work is brought to me by my superior.

1642 Q. Yes. And in what form is it brought to you?

A. In the form of requests for plans, specifications, estimates, and so forth.

Q. Is there a work sheet or anything of that sort which suggests what plans and specifications you are to draft?

A. Usually the request is made by Mr. Dequine, and there is no formal work sheet.

Q. I see. Is Mr. Dequine your superior?

A. Yes, sir.

Q. You work under him, do you?

A. Yes, sir.

Q. Now, do you determine whether or not a piece of work shall be done?

A. I do not.

Q. Yes. I am talking about construction work. Do you, however, determine, whether or not, upon your own initiative, a small repair job might be done?

A. Yes.

Q. You do that. When Mr. Dequine informs you that some construction work is to be done and that plans and specifications are to be drawn up, what do you do?

A. I make or do the necessary field work, and draw up the plan and specifications.

Q. Yes.

A. And write the work order for it.

1643 Q. And do you make the purchases which are necessary for putting the plans and specifications into concrete realization?

A. I do not.

Q. What is done with the plans and specifications after they are formed by you?

A. They are given to Mr. Dequine for approval.

Q. Yes. Does he or someone above him determine whether or not the thing shall be undertaken?

A. Yes, sir.

Q. Do you determine that in any event?

A. No, except in the case you mentioned, of some small repair job.

Q. Yes. How many persons do you have under you?

A. I believe I have seven at the present time.

Q. What, in general do those seven do?

A. Five of them are right of way men, one of them is an assistant in the office, and one a stenographer.

Q. Yes. Now, let us get to this right of way work. Will you tell the board what the work is that you are engaged in with the company in that line?

A. I am engaged in, you might say, the office work in connection with the securing of right of way for rural distribution lines. The right of way is secured by these five men that I mentioned.

1644 That is, they do the field work and secure the signatures on the grants for right of way.

Q. During the last year and a half, what right of way work has been involved with this company?

A. Mainly the securing of right of way for rural distribution lines.

Q. State whether or not that has been an active kind of construction work with this company the last year and a half?

The Witness: Will you repeat your question?

(Question read.)

The Witness: Yes, it has.

Q. (By Mr. Seebirt): Yes. Now, when you construct a rural line, Mr. Henderson, what is necessary to do?

A. The first step is to receive contracts from people who desire to have electric service. After that the plans are made for the construction of the line, which plans include right of way.

Q. Do you have anything to do with the obtaining of those contracts for service?

A. No, I do not.

Q. So it starts from that point, does it?

A. Yes, sir.

Q. The construction work?

A. Yes, sir.

1645 Q. Then where do you get any directions with reference to the lines? Where does that come in?

A. I get the requests for securing the right of way after the line has been approved by the management; that is, after the construction of the line has been approved.

Q. And where does that request come from that you secure the right of way?

A. It usually comes from our rural service department.

Q. Who is at the head of that?

A. Mr. Sherman.

Q. Mr. Sherman. And does he come to you and see you personally?

A. No.

Q. Or does it come in the form of a request?

A. In the form of a request.

Q. Written request?

A. Yes.

Q. Does it describe the service which has got to be given?

A. Describes the location of the customers and I receive from the engineer the location of the line which is to be constructed.

Q. Now, do your county authorities here permit you to build these lines along the highways?

A. Yes, they do.

Q. Sometimes then you do that?

1646 A. Yes.

Q. Well, why do you have to go to people at all, then, if you can build then along the highways?

A. Because of obstructions that we encounter along the highways; trees, and on certain highways there is a

program for widening, which we feel justifies us in locating our lines off of the highway.

Q. Yes. Where you meet those obstructions or the conditions that you have mentioned, you then go on the farmers' land, do you?

A. That is right.

Q. Now, what do you have to do with respect to getting the right of way from him?

A. We ask him to sign a grant which we call an easement, giving us the right to erect and maintain our lines.

Q. What is the truth as to whether in many cases that same farmer wants or uses the service himself?

A. In a great many cases that same farmer uses the service.

Q. Yes. In other cases they do not?

A. Yes, that is right.

Q. Yes. Tell the Board, now, just what you do to get together along the line there,—build the line?

A. We have a property map for reference, showing the name of the property owner. These easements are prepared according to that map before they are given to the right of way man. The right of way man then
1647 takes the easements which have been prepared and goes to see the people who own the property and asks them to sign the easements giving us the right to build the line.

Q. Is anything paid to the farmer for the right of crossing his field?

A. Only a dollar as a consideration for the agreement.

Q. Do you ever pay anything more than a dollar?

A. Not on rural distribution lines.

Q. Well, what if he said "No, you just can't go across here," and you would have to go across; would you pay him more?

A. No. If there are any payments made it has to be made by those people who are receiving the service.

Q. I see. Do you then go to these folks that want the service and place the problem before them?

A. Yes, we do.

Q. Yes. And if you can't get the right of way for the amount which you have stated and if you can get no cooperation from them, what happens?

A. We either relocate the line or don't build it.

Q. I see. In building these rural lines, have you had any condemnation suits?

A. No, we have not.

Q. You have had none whatsoever?

1648 A. None whatsoever.

Q. Now, let us get back to the plans and specifications for work. After you have drafted those and some one other than yourself determines that the work shall be done, and it starts, do you have anything to do in connection with it?

A. I have the field supervision of the work as it progresses.

Q. And what is that supervision?

A. It is the supervision to determine that the lines are built according to the plans and specifications.

Q. Yes. It is a matter of checking the construction with the plan, is it?

A. Yes, sir.

Q. And the specifications?

A. Yes, sir.

Q. When did you first hear about the organization of this Association called the Michiana?

A. My first knowledge of it was from Mr. Harter, who called at my house.

Q. Who is Mr. Harter, please?

A. He is one of the transmission line foremen.

Q. Yes. And he works under whom?

A. Mr. Dequine.

Q. Yes. I think you recall that there was a meeting at your home on May 20th, do you not?

A. Yes, sir.

1649 Q. Now, with reference to that when was it that Mr. Harter came to see you?

A. Mr. Harter came to see me on a Sunday afternoon very likely previous—the Sunday previous to the time of this meeting.

Q. Yes. And what did he say to you on that occasion?

A. He told me that some of the older men of the organization had discussed the forming of some kind of an Association, and he said that he felt that they would be in a better position by having such an Association to meet with the management and asked me if I would help them in forming such an organization.

Q. Between you and Mr. Harter on that occasion, was there any discussion as to labor conditions in South Bend, do you remember?

A. Well, at that time there was considerable write-up in the paper about various labor troubles, and there might have been some discussion between Mr. Harter and myself, but it wasn't to any extent. It might have been mentioned during the conversation.

Q. And what other things did you say between yourselves as to this organization; its purposes, the reason for forming it?

A. Well, after he had explained the purpose of the organization I asked him a few questions as to
1650 what the plans were, and I believe he said in that meeting, or in that conversation, that the linemen felt that they should have more money and he felt by having an organization that would be one way of getting it.

Q. Yes. Did he, or did someone subsequently suggest the holding of a meeting at your home?

A. It was some time after that. I don't believe it was mentioned in our conversation.

Q. Yes. And who was it that suggested that meeting?

A. I don't know that anyone suggested that it be held at my home. We discussed having a meeting between representatives of the various departments so that we—

Q. Well, then after Harter saw you there must have been some other group of persons that came to see you or that you sat in with; is that true?

A. Yes, it was discussed with other employees of the company.

Q. Well, tell us about that—after Harter came to see you.

A. In the next two or three days the matter was talked over with various men connected with the company.

Q. Who were they?

A. I remember of talking to Mr. Carlton. I don't remember of talking to anyone else previous to the meeting at my home.

Q. Well, who was it that suggested the holding
1651 of the meeting at your home?

A. Well, the matter was brought up of a meeting place, and since there was to be only a small group, we felt that we couldn't rent a hall, or anything of that kind, so I believe I volunteered to provide the space for the meeting.

Q. To whom did you volunteer it?

A. Well, I am not sure, but I don't remember of talking to anyone but Mr. Carlton concerning the meeting at that time. It probably was to him.

Q. I see. Then did you do anything towards asking anybody to attend the meeting at your home?

A. I don't remember that I made or gave any personal invitations to any of the members that were there.

Q. I see. Who attended that meeting?

A. Mr. Marsh, Mr. Collins, Mr. Carlton, I believe—there was a man from Buchanan—I believe a Mr. Andrews.

Q. Let me suggest another name. I don't know whether he was there or not. Was there a Mr. LaVelle present?

A. No, I don't think so.

Q. There wasn't? Oh, I see. Was LaVelle present when it was suggested that a meeting be held at your house?

A. Not that I remember.

Q. You don't recall that?

A. No.

Q. Tell us what the talk was, and what the
1652 discussion was at your house?

A. This meeting held at my house was for the

purpose of, you might say, setting up the machinery for an organization. There was an informal discussion. One of the things discussed at the meeting was the advisability of having a legal counsel. We mentioned the name of—the name of Mr. Jernegan was mentioned, and I believe Mr. Collins or Mr. Marsh asked those present if any of them knew Mr. Jernegan or had any dealings with him, and after some discussion it was decided that someone would contact Mr. Jernegan.

Q. And who was it that was appointed to do that?

A. Mr. Marsh and Mr. Collins went to see Mr. Jernegan.

Q. Go ahead. Tell us about the rest of that meeting, then.

A. There was a discussion as to how to go about the formation of an organization, and none of the men present were very familiar with the proper steps to be taken, and we felt that after getting the advice from Mr. Jernegan we would be in a better position to know how to go ahead with it.

Q. Do you know, Mr. Henderson, whether at that time—just shortly before that time, rather, that the State Legislature of the State of Indiana had passed a Labor Act?

A. I don't recall that there was any mention made of it.

Q. You don't recall that?

A. No.

Q. Was there any talk held as to why an attor-
1653 ney should be employed at all?

A. Yes. We knew that the Wagner Labor Law had gone into effect sometime before that, and that there were certain provisions that we were not in position to be familiar with, and for that reason we felt that we should seek the advice of an attorney so that we would comply with the provisions of that law.

Q. Did you talk about the Wagner Act and that alone?

A. Well, of course, we knew that there were certain State laws that should be complied with also, but—

Q. Well, how long before May, 1937, had the State Legislature for that year adjourned?

A. I couldn't say.

Q. You're not familiar with those things?

A. No.

Q. Was there anything else said there that you remember of now, as to why such an Association should be formed, or were you talking about the form of organization—the preliminaries of organization?

A. I don't believe that there was anything further said about the purpose of forming the organization. The main part of the discussion was the steps to be taken in forming such an organization.

Q. Yes. Later that evening did Mr. Marsh report back to you after he had left?

1654 A. Yes, I believe he did.

Q. Yes. What was that with respect to?

A. With respect to retaining Mr. Jernegan as legal counsel.

Q. And what did he tell you?

A. He said that he had talked to Mr. Jernegan and he had agreed to act as our legal adviser.

Q. Did you attend the meeting on May 20th?

A. Yes, sir.

Q. Yes. Describe that meeting to the Board.

A. The meeting was a general meeting for all the employees of the company who were interested in forming this organization. Cards had been passed around to some of them, but I don't think that all of them who attended the meeting had signed cards previously. I believe—

Q. Now, just on that point there, were people stopped at the door and required to sign cards, or could they come in without signing a card?

A. There was no one stopped at the door, to my knowledge.

Q. And was there a goodly crowd or a few that attended the meeting?

A. There was quite a large crowd.

Q. How many?

A. Oh, I would say in the neighborhood of five or six hundred.

Q. And this was part of a church or meeting
1655 place, was it?

A. It was a school.

Q. It was a school?

A. The school auditorium.

Q. A school auditorium?

A. Yes, sir.

Q. Do you have any recollection, Mr. Henderson, about the solicitation of members there at that meeting and after they were seated and in the meeting?

A. I believe Mr. Lambert, who was the temporary chairman, asked a group if there was anyone who hadn't signed cards who wished to have them, and since there were several people raised their hands, indicating that they wanted cards, they were passed around.

Q. How were these cards gotten to them and taken up?

A. They were passed around by someone who was there in the hall.

Q. How did they do that?

A. Just walked down the aisle and passed them out, as I remember.

Q. And then afterwards did they walk down the aisle again?

A. I think so.

Q. Yes. Picking them up?

A. Yes.

Q. What was the discussion when the chairman called the meeting to order and after he opened it up?

1656 A. I believe the chairman explained the purpose of the meeting, explaining that the group was called together to find out what their desires were in the forming of an organization. I think Mr. Lambert explained also their rights under the Wagner Labor Law. I think he said in that meeting that under this law the employees had a right to join either the C. I. O., the A. F. of L., or form an organization of their own.

Q. What else, if anything?

A. After making this explanation, I believe there was a vote taken as to—or I don't remember just how it was brought up, but I believe there was a motion made that the employees form an organization of their own.

Q. Well, in connection with the discussion of the Wagner Act, did Mr. Jernegan participate therein?

A. I believe he did.

Q. And did he take the stage or rostrum for that purpose?

A. I don't remember that he stood on the stage. I believe he gave a short talk, but whether or not he was standing on the stage, I don't remember.

Q. I see. Well, that is unimportant. You do recall that he gave a talk on the law?

A. Yes.

Q. Did he say anything about the rights of the employees to organize such an Association?

1657 A. Yes, he did.

Q. Can you give us the substance of what he said?

A. I don't remember his talk very distinctly, but it was by way of explanation of the rights given employees by the Wagner law.

Q. Yes. Did he talk in particular about Section 8 of the law, do you know? Are you familiar with the law?

A. No, I don't know what that is.

Q. You couldn't recall whether or not he talked about any particular section?

A. No, I don't know that.

Q. And I wish you would develop if you can anything further that Mr. Jernegan said.

A. Well, I believe I have covered, in general, the—

Q. Well, personally I don't know about it, but I am curious about it, as to whether or not he said anything about their right to form an independent association.

A. Yes, he did. That was one of the things he explained; that according to the Wagner Labor Law the employees had a right to form their own Association.

Q. I see. Was there an assembly of representatives

from the different departments that evening; the getting of them together in a form?

A. Yes.

Q. Tell us about that.

1658 A. Mr. Lambert had gone through the explanation of what the meeting was called for, and he asked the various groups represented to select a representative and send them to the platform.

Q. Did they do so?

A. Yes.

Q. Had Mr. Jernegan prepared any instrument before the meeting was called to order? Did he bring any instrument with him, do you know?

A. Yes, I think he did.

Q. He did. And was it submitted there to the meeting?

A. Yes.

Q. Was it signed by certain persons there?

A. Yes.

Q. Can you recall anything else at that meeting?

A. This instrument or letter which was prepared by Mr. Jernegan, I believe was signed by representatives who were selected by these various groups, and, as I recall it, this letter or document was addressed to the management of the Indiana & Michigan Electric Company.

Q. Did you attend later meetings of the Association?

A. Yes.

Q. Did you attend frequently?

A. Quite frequently.

* * * * * * * * * * *

Q. Yes. Mr. Henderson, did anybody like Mr.
1659 Dequine, Mr. English, Mr. Calvert, any of those men, suggest to you at any time the participation by yourself in the formation of this Association?

A. No, they didn't.

Q. Did you ever talk with any of those men about the formation of this Association?

A. No, I haven't.

Q. Did any officers of this corporation ever
1660 address you upon the subject?

A. No.

Q. Did Mr. Harter indicate to you that he was doing this at the request or solicitation of anybody who were officers or executives of this company?

A. No, he didn't.

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CROSS EXAMINATION

Q. (By Mr. Reynolds): Was Mr. Harter also one of those present at the meeting at your house, Mr. Henderson?

A. No, he was not.

Q. Did you expect him to be there or did you know why he wasn't?

A. I don't know that I expected him to be there. I don't recall why he wasn't there.

Q. You received your first knowledge of the Association from Mr. Harter, though?

A. Yes, I did.

Q. Do you know who made the arrangements to use the school auditorium?

A. I believe Mr. Miles made the arrangements. I am not positive about that, but that is my recollection of it.

Q. Was Mr. Miles present at the meeting at your house?

A. No, he wasn't.

Q. Do you know why he wasn't there?

1661 A. No, I don't know of any reason why he wasn't there.

Q. Well, how did he know about the plan to hold a general meeting?

A. Some one of the men who were present at my house, no doubt, got in touch with him about a place to hold the meeting.

Q. Did you know how he made those arrangements—what arrangements he made with the school authorities?

A. Mr. Miles is quite familiar with the school authorities, and for that reason he was asked to make the arrangements. I don't know how he made them.

Q. Is he a member of the Board of Education, or something of that nature?

A. No, he isn't.

Q. Does Mr. Miles work in the same office that you do?

A. Yes, he does.

Q. (By Trial Examiner Dudley): Is he under you?

A. No, he isn't.

Q. Is he over you?

A. No.

Q. Equal to you?

A. Yes.

Q. (By Mr. Reynolds): Is Mr. Miles a salaried man, as you are?

A. Yes.

1662 Q. Do you know what his rate of pay is, as compared with yours?

A. No, I don't.

Q. Now, you say Mr. Lambert acted as chairman of the first meeting. Do you know how he happened to be chairman of the meeting?

A. Yes, I think I can explain it. After the meeting at my house we had planned to ask Mr. Holmes to act as chairman of this first meeting, but, as I remember it, he was out of town, and until just before the meeting we didn't know who would act as chairman, and since I knew Mr. Lambert and knew that he was capable of acting as chairman, I believe that I, among some others asked him if he would act as chairman.

Q. Mr. Lambert is under your supervision, is he not?

A. Yes, sir.

Q. As one of the right of way agents?

A. Right of way man, yes.

Q. Now, did you in any way prepare Mr. Lambert for the meeting?

A. Not in any way, except just talking to him just previous to the time the meeting was called.

Q. Well, how did he know that he should be there, do you know? Who notified him of the meeting?

A. No, I don't know who notified him.

Q. Now, you testified that Mr. Lambert read,
1663 or did you testify that Mr. Lambert read some excerpts of the Wagner Act?

A. I believe he did, yes.

Q. Do you know where he got a copy of the Act to use that evening?

A. I think he got it from Mr. Jernegan.

Q. Do you know whether Mr. Lambert had been familiar with the provisions of the Act before he read them out of the pamphlet?

A. I don't think he was familiar, except a general knowledge that one would gain from the newspapers.

Q. Did he answer any questions that were asked about the Act, after he read the excerpts, or were there any questions?

A. I believe there were a few questions and I think Mr. Lambert answered them.

Q. He answered the questions?

A. He either answered them himself or referred the question to Mr. Jernegan. I don't recall exactly that procedure.

Q. Is Mr. Lambert a lawyer?

A. No, he is not.

Q. Now, Mr. Henderson, in describing your duties I believe you said that when new construction of lines was going on that you went out on the scene and checked to see whether the construction was according to the blueprint specifications?

A. Yes, sir.

1664 Q. Have there been any occasions when you found that the work varied somewhat from your blueprints?

A. At times, yes, there have been.

Q. What did you do on those occasions?

A. I talked to the man in charge of the construction crew and see that it is corrected.

Q. You talk to the foreman of the crew which is doing the construction work?

A. If the matter needs to be corrected immediately, that would be the procedure followed. If not, I would

very likely talk to the general foreman in charge of the work.

Q. Do you consider that you have authority to tell the foreman or the general foreman what changes are to be made in the work?

A. Only insofar as following the specifications are concerned.

Q. Well now, what do you mean by that? Do you mean you have the right to change the form of the work if it does not meet the specifications?

A. Yes, because the specifications determine the way the work should be done.

Q. And in all cases the foreman or the general foreman will make the changes that you suggest?

A. If they conform with the specifications under which they are working.

Q. Well, what do you mean, that the foreman
1665 looks at the blueprint also?

A. Yes.

Q. And decided whether you are right or not?

A. Yes. In other words, he has no right to change the specifications which have been approved by the superintendent, neither have I.

Q. Well, is it not a fact that your judgment of whether there has been a variation from the specifications is usually the thing that controls, being the engineer?

A. Well, after talking it over with the man in charge of the work, in charge of the crew, I will say perhaps.

Q. But your judgment controls if there is any difference in opinion?

A. Not necessarily.

Q. Have there been cases where there was a difference of opinion?

A. Yes.

Q. What did you do on those occasions?

A. Talked it over with the general foreman and the superintendent, if necessary.

Q. (By Trial Examiner Dudley): Do you usually win?

A. I wouldn't say that I do in those cases.

Q. Do you draw most of those specifications?

A. Yes.

Q. You probably know them better than the
1666 man that is on the job?

A. Very likely.

Q. So you probably do win, don't you?

A. I wouldn't say that I usually do.

Q. Aren't you right over half the time?

A. Well, I couldn't say as to that.

Q. Or are you just modest?

Q. (By Mr. Reynolds): Will you describe the extent of your supervision over these right of way agents that you say are under you. How does your work relate to their work?

A. As I explained previously, these requests to obtain right of way for our rural lines come from our rural service department and I get from the engineer the location of the line. After getting that information I have a map prepared showing the property owners and the location of the line. The easements are then prepared and given to the right of way men for securing the signatures.

Q. You assign the particular right of way man who is to go on the particular job?

A. Yes.

Q. Do they have any specific territories, or may they work anywhere throughout the system.

A. They may work anywhere throughout the system.

Q. Do you ever give them any special instructions about how to do their work?

A. There is no special instructions unless there
1667 is some special feature connected with the particular job.

Q. You explain to them before going out the particular problems there are with reference to that?

A. Yes, if I know of any special thing to be considered.

Q. Suppose they run up against some obstacles out there that were not foreseen, do they get in touch with you?

A. Yes.

Q. Now, I believe you stated that there is one stenographer under your supervision?

A. Yes, sir.

Q. Does she do exclusively work for you?

A. No.

Q. For whom else does she work?

A. Anyone else in the office that has work for her to do, that is in the office where I have my desk.

Q. Well, what causes you to say that you have direction or supervision over her?

A. Well, a very large part of the work that she does is my work which I give her.

Q. (By Trial Examiner Dudley): Is the other work that she does for the other people who are in your department?

A. Yes.

Q. (By Mr. Reynolds): You stated that you had an assistant?

A. Yes.

1668 Q. Who is your assistant?

A. Mr. Curran.

Q. Mr. Curran, and what is the nature of his work?

A. He prepares these easements and maps, and checks the easements when they come in and makes the final maps and sends the easements out to the right of way office.

Q. Is he a straight salaried man or hourly paid?

A. Salary.

* * * * * * * * * *

Q. Did you have any reasons personal to yourself for desiring to assist in the formation of this Association?

A. I felt that an organization of some kind could be of value to the employees in having a method of contacting the management and settling grievances that might come up from time to time.

Q. Did you know of any grievances existing at that time that were not disposed of?

1669 A. There was a feeling among some of the

employees that they should get more money. In fact, it was quite general.

Q. Among the men who worked in your office?

A. Not only that, but the line department and those that worked outside also.

Q. Did you have any contact with the outside workers to speak of, or was that only occasional?

A. I have some contact with them.

Q. Did you talk about working conditions and wages with these men?

A. I talked about that question with Mr. Harter when he came out on the Sunday afternoon I mentioned.

* * * * * * * * * * *

Q. (By Trial Examiner Dudley): Mr. Hender-
1672 son, I would like to ask you some more about your job and what you do.

Now, as I remember it, you said you were Transmission Engineer, didn't you?

A. Yes, sir.

Q. And you draw up specifications for construction?

A. Yes.

Q. Now, what would you be constructing in your department?

A. Transmission and distribution lines.

Q. Now, do you construct buildings?

A. No.

Q. It's entirely the construction of lines?

A. That is right.

Q. Which, roughly speaking, includes what?

A. Our 27,000 volt lines and distribution lines
1673 at 2,300 or 6,900 volts.

Q. Does that mean that you lay out the line—I mean you lay out the path that your line will take over the ground?

A. Yes.

Q. And then put in poles and string wires along the poles?

A. Yes, that is right.

Q. Is that roughly, all there is to it?

A. Yes, that's in general what my work is.

Q. Are you the one that determines where these lines will go?

A. No, not entirely.

Q. When you draw up your plans what decisions do you make or what recommendations do you make when you draw those plans?

A. My work is merely a recommendation to be approved by the superintendent.

Q. Yes. Now, do you recommend the path that the line will take?

A. Yes.

Q. That is, you have a map or a survey of the territory involved?

A. Yes.

Q. With the path for the line indicated precisely on that map?

A. Yes.

Q. And that's your recommendation?

1674 A. Yes.

Q. Does that include, for example, a topographic survey?

A. No, it doesn't. Usually just an inspection of the ground.

Q. You don't make topographic surveys?

A. No.

Q. Do you have other kinds of surveyors who will run out tract lines of ownerships so you will know whose land you are going on?

A. No. We usually get the property maps from the county records and make no survey in the field to determine the ownership.

Q. Now, are any of the men who work on the ground in the erection of these lines under you?

A. That is the actual construction work?

Q. Yes.

A. No, they are not.

Q. How about men who will survey on the ground to locate the line on the ground as you have drawn it on the map?

A. Yes, sometimes those men are under my direction.

Q. How large a gang would that be?

A. Two or three.

Q. What do you have, an axe man, a chain man, and people like that?

A. Usually one the head of the party and one

1675 for chain man and rod man.

Q. Now, when you draw the plan do you specify, for example, what kind of poles will be used?

A. Yes.

Q. And do you specify how they will be set? Do you set them in anything; concrete or such material?

A. Ordinarily they are set in earth, just a hole dug in the ground, with no material around it.

Q. Does the making of your plans embody the determination of whether the pole will be set in water, on rocky ground or on a hill, or that type of problem?

A. The location of the pole would, of course, determine that.

Q. Do you determine that in advance?

A. Before the work is started, do you mean?

Q. Before you draw your final plan.

A. It is determined at the time the final plans are drawn. That is a part of the final plans, you might say.

Q. That is part of your recommendations, is it?

A. Yes.

Q. Does the drawing of specifications by you include the kind of wire or cables that are to be used?

A. Ordinarily that is decided before the plans are drawn.

Q. Do you make an estimate of the cost?

A. Yes, there is an estimate made.

1676 Q. Do you make it?

A. In some cases, not always.

Q. Well, if you don't is it somebody who works under you that makes it?

A. No, not in all cases. Someone else in the same office at times.

Q. You mean sometimes it might be someone that is not in your department?

A. I would say they were in the same department, but not under my supervision.

Q. I see. Some part of your unit of employees?

A. That is right.

Q. When you do that—you do that at times, I take it?

A. Yes.

Q. When you do that, do you include a labor estimate?

A. Yes.

Q. A material estimate?

A. Yes.

Q. An estimate of the time that will be required; that is, how many weeks or months?

A. Yes.

Q. Does your assistant do, in general, the same kind of work that you do?

A. No, it isn't entirely the same. It's more of the routine work of the office, and checking easements, maps and so forth.

1677 Q. Is the responsibility placed on you to see that you have the easements for the same ground that you are building the line on?

A. Yes, to some extent.

Q. Well, who else has it?

A. Well, I make the reports as soon as the right of way is secured, and, naturally, check over the easements to see that all the ground is covered on which we plan to build the line.

Q. And is it your responsibility to see that you have covered that ground?

A. I should say that it was, yes.

Q. Would it be your responsibility to know whether there was quick sand or a swamp on the territory through which you planned to run this line?

A. In making estimates, of course, I take into consideration all of those factors that I am aware of.

Q. Are you responsible for being aware of them?

A. Well, something that can be determined on inspection I would be responsible for, but if a person wasn't able to determine that from inspection in the field, I

don't believe that I would be responsible for finding that condition after the construction was started.

Q. You personally go out and inspect the ground over which you plan to build a line?

A. I do in lines—I would say our transmission
1678 lines. That is, the high voltage lines.

Q. And on others you do not do it personally?

A. No.

Q. Does somebody under you do it?

A. Usually my assistant goes out and makes inspections of that kind.

Q. Did you hear the testimony of Mr. Nelson Lambert in this hearing as to the nature of his duties?

A. No, I didn't.

Q. Did you read it in the transcript of the proceedings?

A. Yes, I read it.

Q. Did that seem to be accurate to you?

A. Yes, I believe so. I don't know—I don't remember of any discrepancies in it.

Q. Is that about what the rest of the right of way men under you do?

* * * * * * * * * *

Q. Do you know how the word was passed out
1680 to the men to attend the May 20th meeting?

A. I don't think there were any printed notices. I think it was just passed around from the people who had attended this meeting at my house, from them to people who were in contact with various employees.

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RE-DIRECT EXAMINATION

Q. (By Mr. Seebirt): Mr. Henderson, you have described at length, both to the Examiner and to counsel, your duties, what you do.

Will you state whether there are other men in your organization that do exactly the same kind of
1681 work that you do?

A. No, I don't believe that there are any that do exactly the same thing.

Q. Well, there are other men who do part of the things that you do?

A. I don't know as I understand just your question.

Q. I mean the men at the company— you understand me, do you?

A. Yes.

Q. Yes.

Well, you have other men: right of way men?

A. Other than myself—

Q. Yes.

A. —or those that work under me?

Q. Well, other than yourself.

A. I have those men that work under my direction.

Q. They all work under you?

A. Yes.

Mr. Seebirt: I see. I guess that is all.

RE-CROSS EXAMINATION

Q. (By Mr. Reynolds): What is your educational background, Mr. Henderson?

A. I have a Bachelor of Science degree.

Q. From what college?

A. Iowa State.

1682 Q. Iowa State?

A. Iowa State. Professional Degree from Iowa State.

Q. You studied mechanical engineering?

A. Electrical engineering.

Q. Electrical engineering. When did you graduate from Iowa State?

A. In 1924.

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DONOVAN D. STROCK,

a witness called by and on behalf of the Respondent, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q. (By Mr. Seebirt): Will you state your full name?

A. Donovan D. Strock.

Q. Where do you live?

A. Butler, Indiana.

Q. Are you an employee of the Indiana & Michigan Electric Company?

A. Yes, sir.

Q. And are you employed at Butler?

A. Yes, sir.

1683 Q. And part of the property of this company is at Butler?

A. Yes, sir.

Q. Does it serve the city of Butler and surrounding communities?

A. It does.

Q. That is in eastern Indiana?

A. Yes, sir.

Q. And what is your position, if any, that you have?

A. Just line foreman, I guess.

Q. Line foreman. How many men do you have under you?

A. Four besides myself.

Q. I am directing your attention to the year 1937. I will ask you who they were?

A. Do you want me to name them?

Q. Yes.

A. Well, I had Paul Glawe, a truck driver, Walter Hulwick, lineman.

Trial Examiner Dudley: How do you spell that name?

The Witness: H-u-l-w-i-c-k.

Charles Dailey, lineman, and John Moran, ground man. And also during that period I had an extra man from South Bend to work vacation periods for part time down there. Do you want him also?

Q. (By Mr. Seebirt): No, I want the members of your crew. Were you present in the hearing when one

1684 Walter Hulwick testified?

A. Yes, sir.

Q. Did you hear him testify that prior to May 20th, 1937, that you took this crew out on the job, out to work, and that you sat down on the ground and talked for two hours to those men about forming this Association?

A. I heard him testify that, yes, sir.

Q. Tell the Examiner whether or not that is true.

A. That is not true.

Q. Yes. Did you do some work on the Butler District soliciting members for the union known as Michiana?

A. No, I believe I asked all the different fellows if they cared to join. That is, outside of that I didn't do anything.

Q. Yes. Did you pass out cards to these fellows that you have mentioned?

A. No, I don't—I haven't any recollection.

Q. Did you take up cards from them?

A. No. I don't—

Q. You don't have any recollection of it?

A. No, sir.

Q. Did you invite them to attend the meeting of May 20th?

A. We all came down here in a body. I believe there was two carloads of us.

Q. Yes. I wish you would get back to my ques-
1685 tion. Did you invite them to come to that meeting?

A. No, sir.

Q. You did not. Do you know how they happened to come?

A. They were all interested, the same as I was, and wanted to know what was going on.

Q. Yes, that's very good, Mr. Strock, but you are located over in eastern Indiana, quite a distance from this property. Now, it wasn't broadcast over the radio that there was going to be a meeting at South Bend, was it?

A. No, sir.

Q. The Examiner is anxious to find out how you happened to get down to this meeting at South Bend?

A. Well, I don't believe I can say who brought that information to Butler. There is an interchange of material, freight and stuff like that, and these South Bend men are going back and forth all the time, and, naturally, we talk to them.

Q. I will put it this way. Wa it or was it not generally known among the employees that there was going to be that meeting?

A. Yes, they all seemed to know about it.

Q. Did these men that you have given the names of, did they come to this meeting with you in these automobiles that you speak of?

A. I believe they were all there, every one of
1686 them.

Q. Did you hear this man, Mr. Hulwick, testify about one Mr. Miles and himself and Mr. Anderson coming to your house?

A. I did.

Q. 924. What time of the year was that?

A. That was in the summertime, is all I can tell you.

Q. You do recall that they did come?

A. Yes, sir.

Q. So there was such an incident?

A. Yes.

Q. Yes. When they came to your house what did they say to you?

A. Called me out to the car and advised me to sit in, and wanted to know if I wanted to sign up an application for the I. B. E. W.

Q. Yes. And what did you tell them?

A. I told them I did not.

Q. At that time, Mr. Strock, had the contract, or rather, the organization, I mean of the Michiana—had that been formed?

A. I believe it had.

Q. Yes.

A. I am not sure of that point.

Q. And they asked you to join the I. B. E. W.? And what did you reply?

A. I told them that I didn't care to join.

1687 Q. Yes. Anything else?

A. Well, they did most of the talking in that meeting. I done the listening part to a great extent.

Q. And did you say this, quoting from his testimony that: "he," meaning yourself, "said that he didn't think

it would ever go over for this company"? Did you say that to them?

A. Not in those words.

Q. Well, what did you say?

A. I told him that there were enough of us older men here and we had organization enough—I mean that we'd stand together close enough that I didn't believe they could ever get a majority to put that thing across.

Q. Well, did you say something to him that as long as the company had recognized the Michiana that this could not happen? Did you say anything of that sort?

A. I don't remember ever of making such a statement.

Q. You don't. Did you make this statement? 937: "He," meaning yourself, "said that he didn't think that any outside union would have any chance of organizing?" Did you say that?

A. No, sir.

Q. What did you say about that?

A. Well, that has the same meaning to me as the question I just answered there.

1688 Q. Yes. What was that?

A. I would have no authority to state whether they could organize this company or not. I have no authority such as that.

Q. I understand that, but I am trying to find out what you said and what you replied to that.

A. I told them that we older fellows were banded together in such a way that they could never get a majority of us.

Q. Well, at that time how were you banded together?

A. Well, that must have been this Association of ours.

Q. Well, now, to refresh your recollection, if it didn't exist, say so; and if it did exist, say so. What is your recollection about it?

A. Well, it did exist, then, at that time.

Q. Is that what you were talking about?

A. Yes, sir.

Q. Yes. There was one of these men on your crew, I think you told me, was a heavy drinker?

A. Yes, sir.

Q. What is his name?
A. The man that testified, Mr. Hulwick.
Q. Mr. Hulwick. And what was the truth, Mr. Strock, as to his discharging his duties during the hours that he was to be upon service of the company?
A. Well, there were several occasions when he
1689 came to work when he was not really fit to be put to work on account of his drinking; and there were other occasions when he didn't even show up for work, for, on one occasion two days, and another occasion three days at a time.
Q. Yes. And when he was off duty, about the town of Butler did you frequently see him?
A. Yes.
Q. State whether or not you would see him in an intoxicated condition?
A. I certainly did.
Q. Now, after this incident of seeing him in that condition would he turn up for work?
A. After he had straightened up partly.
Q. Well, I mean the next morning.
A. Sometimes, and sometimes he wouldn't. Sometimes he would stay off a day or two.
Q. Did you remonstrate with him about this?
A. Certainly.
Q. Yes. Did you keep him on the job?
A. Yes.
Q. Never fired him?
A. No, sir. I haven't any authority to fire him.
Q. Well, did you ever recommend his discharge?
A. No, sir.
Q. Did you know that he was a member of the
1690 I. B. E. W.?
A. He told me he was one night in an intoxicated condition.
Q. And you knew this and suffered his service, as you have explained?
A. Yes, sir.
Q. Now, I think he has complained, Mr. Strock, about

not getting overtime or extra service. Will you tell the Examiner how that's handled over in your district?

A. There is very little overtime unless we have a serious break, of course, which we haven't had for some period of time. There is occasional trouble calls come up, when we have to have a lineman for duty, and I always aim to split that between the two linemen if possible. That is, I call one at one time and the next time I call the other one.

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Q. Did you ever go to get this man Hulwick for
1691 an overtime service in an emergency when he was not capable of doing the work?

A. Yes, sir.

Q. Yes. When he was in a drunken condition?

A. Yes, sir.

Q. Yes. And this work that you have is mainly going up poles, isn't it?

A. It is.

Q. Could you send a man like that up a pole?

A. No, sir.

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Cross Examination

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1692 Q. Now, in that conversation you had with Mr. Marks and Mr. Hulwick, isn't it a fact that you did say that the company would never recognize an outside organization?

A. No, sir. I don't have any authority to say what the company is going to do.

Q. I am asking you if you didn't say that, though, as a matter of fact.

A. No, sir.

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Trial Examiner Dudley: I would like to ask you
1695 a few questions.

Q. (By Trial Examiner Dudley): Who is your immediate superior, Mr. Strock?

A. I would say my immediate superior would be Mr. Livelsberger.

Q. How do you spell his name?

A. L-i-v-e-l-s-b-e-r-g-e-r.

Trial Examiner Dudley: Off the record.

(Discussion off the record.)

Trial Examiner Dudley: On the record.

Q. (By Trial Examiner Dudley): Does Mr. Livelsberger direct you as to where you shall go and what work you shall do?

A. No, sir.

Q. Who does?

A. The engineer of the Butler District determines that as work comes up.

Q. Who is the engineer?

A. Robert Shank.

Q. How do you spell his last name?

A. S-h-a-n-k.

Q. Does Mr. Shank direct you as to what work you and your crew shall do?

A. He hands me the work order and the material, and then I go and do the work.

1696 Q. Does he ever come out on the job to see if you are doing it the way he wants it?

A. Oh, once in a great while.

Q. Does Mr. Livelsberger ever come out on the job?

A. Oh, yes, he is down there once in six months, maybe.

Q. I see. How often does Mr. Shank come?

A. Oh, I would say on an average he might visit me maybe once a week.

Q. Is there anybody else in between you and Mr. Livelsberger?

A. Well, no, I would say there wasn't.

Q. How about Mr. Carlton?

A. Unless it would be Mr. Carlton, in Mr. Livelsberger's absence. If I wanted to have anything from up here, information, I would go through him to get it.

Q. What does Mr. Carlton do?

A. I believe he is Assistant Line Foreman.

Q. Does he ever come out on a job and inspect it?

A. I don't believe he has ever been down in that territory since I have been there. That is, on the job where I was working.

Q. Does he ever give you directions?

A. No, never has yet.

Q. It is pretty much left up to you, the details of how you shall carry out the job?

1697 A. To a great extent, inasmuch as I am isolated like I am.

Q. You have been with the company a long time, have you?

A. Since October 16th, 1922, I believe.

Q. The company has confidence in your judgment, does it?

A. I believe they have.

Q. They leave you to run it pretty much as you think it ought to be run?

A. Oh, no. I have to follow their standards.

Q. Yes, but—

A. Oh, yes.

Q. They think you know enough to follow the standards, do they?

A. Yes, sir, they do.

Q. And you see that your men likewise obey the rules, do you?

A. I try to.

Q. And do a good job of maintenance and construction?

A. Yes.

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Q. Are the men in your group behind in their

1700 dues?

A. I wouldn't want to make a statement on that, because I don't know the standing, but I believe there is only two of us that are paid up.

Q. Which two are they?

A. That is the ground man and myself.

1701 Q. That is you and Mr.—

A. Moran.

Q. —Moran are paid up fully, you think?

A. Yes.

Q. Is Hulwick paying any dues now to the Association?

A. Not to my knowledge.

Q. How about Charles Dailey?

A. He either.

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Q. You told the men you thought the Associa-
1704 tion was a good thing, did you?

A. I told them that I believed in it.

Q. And that you'd joined?

A. Yes.

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